

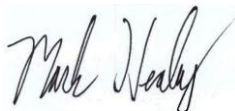
**BOROUGH OF WATCHUNG**  
SOMERSET COUNTY, NEW JERSEY

**HOUSING ELEMENT  
&  
FAIR SHARE PLAN**

REVISED: JANUARY 2026

Adopted by the  
Borough of Watchung Planning Board: February 17, 2026

The original of this report was signed and  
sealed in accordance with N.J.S.A. 45:14A-12.



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## **INTRODUCTION**

### **HISTORY OF NEW JERSEY AFFORDABLE HOUSING LAW**

In 1975 the New Jersey Supreme Court determined, in *Southern Burlington County NAACP v. Township of Mount Laurel* (“Mount Laurel I”) that every developing municipality in New Jersey had an affirmative obligation to provide a “realistic opportunity” for its fair share of low and moderate income housing. In 1983, frustrated with the lack of voluntary compliance, the Supreme Court sought to create an incentive for voluntary compliance in its “Mount Laurel II” decision. In this decision, the Court exposed municipalities that refused to comply voluntarily to the possibility of builder’s remedy relief. The Court also called for the state legislature to enact legislation that would save municipalities from the inefficiency of having the courts determine their affordable housing needs.

#### **First and Second Rounds**

In 1985 the Legislature adopted the Fair Housing Act (N.J.S.A. 52:27D-301 et. seq.) (“FHA”). The FHA created the New Jersey Council on Affordable Housing (COAH) and charged COAH with the responsibility of adopting regulations by which municipalities could determine their fair share responsibilities and the means by which they could satisfy those responsibilities. The Legislature also sought to promote voluntary compliance and empowered municipalities to submit to COAH’s jurisdiction and voluntarily comply under the protections of the COAH process.

Pursuant to the FHA, COAH adopted regulations for the first housing cycle in 1986; which covered the years 1987 through 1993 (“First Round”) and for the second housing cycle in 1994; which covered the years 1993 through 1999 (“Second Round”). Under both the First and Second Rounds, COAH utilized what is commonly referred to as the “fair share” methodology. COAH utilized a different methodology, known as “growth share,” beginning with its efforts to prepare Third Round housing-need numbers.

#### **Third Round**

COAH first adopted the Third Round rules in 2004; which were to cover the years 1999 through 2014. The “growth share” approach attempted to create a nexus between the production of affordable housing and future residential and non-residential development

within a municipality, based on the principle that municipalities should provide affordable housing opportunities proportionate to their market rate residential growth, and that along with employment opportunities there should be proportionate opportunities for affordable housing. Each municipality was required to project the amount of residential and nonresidential growth that would occur during the period 2004 through 2014 and prepare a plan to provide proportionate affordable housing opportunities. The regulations were challenged and in January 2007, the New Jersey Appellate Division invalidated key aspects of COAH's third round rules and ordered COAH to propose and adopt amendments to its rules to address the deficiencies it had identified.

COAH adopted new Third Round rules in May of 2008 and subsequently adopted amendments that became effective on October 20, 2008. Changes to the Fair Housing Act were also adopted in July of 2008 (P.L. 2008 c. 46 on July 17, 2008). The COAH rules and regulations adopted in 2008 were subsequently challenged, and in an October 2010 decision the Appellate Division invalidated the "Growth Share" methodology, and also indicated that COAH should adopt regulations pursuant to the "Fair Share" methodology utilized in the First and Second Rounds. The Supreme Court affirmed this decision in September 2013, invalidating the third iteration of the Third Round regulations and sustaining the invalidation of growth share, and directing COAH to adopt new regulations pursuant to the methodology utilized in the First and Second Rounds. In October of 2014 COAH was deadlocked and failed to adopt their newly revised Third Round regulations. Fair Share Housing Center, who was a party in the earlier cases, responded by filing a motion in aid of litigants' rights with the New Jersey Supreme Court. On March 20, 2015, the Court ruled that COAH was effectively dysfunctional, and consequently returned jurisdiction of affordable housing issues back to the trial courts as it had been prior to the creation of COAH in 1986.

Since the 2015 Mt. Laurel IV decision, municipalities turned to the courts to seek a declaratory judgement of their Third Round housing plans to determine whether they met their constitutional affordable housing obligations and were granted immunity from any "builder's remedy" lawsuits. With no COAH functioning and providing guidance to municipalities to determine their municipal fair share of statewide and regional obligations, a number of independent groups produced their own reports to determine individual obligations across the state. In several court decisions in 2016 and 2018, judges in Middlesex and Mercer County developed a methodology following closely one proposed by Fair Share Housing Center to determine municipal obligations. In the 2018 decision by Judge Jacobson,

it was further determined that the initial period of the Third Round which had not been addressed (1999 – 2015) known as the “gap period” is to be included in each municipality’s Third Round fair share calculations.

To achieve Third Round Compliance, municipalities addressed the obligations of the period from 1999 – 2025 through the courts, and through private settlement agreements with Fair Share Housing Center, ultimately leading to a judgement of compliance and repose from the courts for municipalities that could demonstrate full compliance with the requirements of the Fair Housing Act.

### **Fourth Round**

In March of 2024, P.L. 2024, c.2 was signed into law establishing new procedures for determining statewide needs and municipal obligations for low- and moderate-income housing. This new law formally abolished COAH and established a new “Program” for resolving affordable housing disputes, as well as the authority to review and certify municipal fair share housing plans. The law required municipalities to determine their own fair share obligations by applying the methodology of the Jacobsen decision in Mercer County as it related to the Third Round, and adopt a binding resolution setting those obligation numbers. The law also provided revisions to the crediting structures for affordable units, with changes to the types of affordable units that are permitted to be granted bonus credits. The law established timelines for submission of documents to demonstrate compliance with the Fair Housing Act.

In addition to the revisions to low and moderate income housing crediting, the amended law established a new Affordable Housing Alternative Dispute Resolution Program. The Program is intended to adjudicate any disputes in affordable housing, and function as the administrative body responsible for reviewing and certifying municipal compliance with the Fair Housing Act. Through the Program and the Administrative Office of the Courts, municipalities seeking a judgment of compliance with Affordable Housing regulations must submit a motion for a declaratory judgment from the Program to retain immunity from any potential builders remedy lawsuits.

## **WATCHUNG'S COMPLIANCE HISTORY**

A summary of Watchung's historic affordable housing timeline is included below:

- *September 26, 1988* - The Borough received Substantive Certification from the Council on Affordable Housing ("COAH") for the Borough's First Round fair share obligation under Mount Laurel and the FHA.

The Borough's First Round Substantive Certification obligation was 132 units and included inclusionary zoning for 60 affordable units, a 9 unit rehabilitation program, 6 rental bonus credits and a 57 unit Regional Contribution Agreement with the Town of Phillipsburg.

- *July 1, 1998* - The Borough received Substantive Certification from COAH for the Borough's Second Round obligation under Mount Laurel and the FHA.

The Borough's Second Round Substantive Certification obligation was 206 units, subject to a Vacant Land Adjustment ("VL") establishing the Borough's Realistic Development Potential ('RDP') at 169 units. The VLA reduced the Borough's obligation by 37 units from the original COAH calculation of 206 units. These 37 units became Unmet Need.

- *November 29, 2005* – The Borough adopted a Third Round HEFSP to address the 2004 COAH rules. These COAH rules were subsequently invalidated by the Court.
- *December 2, 2008* - The Planning Board adopted the Borough's Third Round Plan ("Third Round Plan") to meet the Borough's Third Round fair share obligation under Mount Laurel and the FHA.
- *December 11, 2008* - The Borough Council adopted a Resolution endorsing the Third Round Plan and authorized the submission of a Petition for Third Round Substantive Certification to COAH.
- *December 30, 2008* - The Borough submitted the Petition for Third Round Substantive Certification to COAH.

- *February 9, 2009* - COAH declared the Borough's Petition for Third Round Substantive Certification complete.
- *July 20, 2010* - After mediation, the Borough adopted an Amended Third Round HEFSP which included a proposed Route 22 Affordable Housing Overlay District to address the Unmet Need.
- *September 26, 2011* - The 2010 Amended Third Round HEFSP was filed as a re-petition with COAH.
- *April 5, 2012* - Local Planning Services (substitute for COAH during effective period of Reorganization Plan No. 001-2011) acknowledged the Borough's re-petition and stated that at the end of the 45-day no objections were received. COAH did not take action to certify the Borough's Petition.
- *July 2, 2015* – Borough files a Declaratory Judgement with the Court.
- *August 25, 2015* – Court Order granted temporary immunity from exclusionary zoning litigation to Borough of Watchung. This immunity has been extended by the Courts continuing through 2018.
- *June 7, 2018* – Borough of Watchung and Fair Share Housing Center Settlement Agreement was adopted.
- *September 19, 2018* – Superior Court of New Jersey, Law Division, Somerset County granted an Order finding that the FSHC Settlement Agreement in the matter of a judgement of compliance had merit and is fair and reasonable.
- *April 2019* - The 2019 HEFSP was written and adopted in compliance with the terms of the Settlement Agreement. Thereafter, Watchung prepared and adopted the requisite compliance documents.
- *August 28, 2019* - The Final Compliance Hearing was held.

- *September 5, 2019* - Judge Miller issued the Borough the Final Judgment of Compliance and Repose (“JOR”) Order with respect the Borough’s Third Round plan.

## **NEED FOR A SUBMITTAL OF A FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE PLAN**

As summarized above, last year the State adopted updates to the State’s affordable housing laws. The bill (A-4/S-50) establishes a new framework for determining and enforcing municipalities’ affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine and the State’s Fair Housing Act.

Importantly the bill requires that municipalities submit a new Housing Element and Fair Share Plan (HEFSP) addressing how they intend to address their “fourth round” affordable housing obligations for the period 2025-2035.

This HEFSP is submitted to address that requirement.

The bill set forth the various deadlines for key steps leading to State certification and implementation of a compliance Fourth Round HEFSP. These steps and the Borough’s actions with respect to each are outlined below:

- *October 20, 2024* - Deadline for DCA to calculate Fourth Round regional need and municipal Present Need and Prospective Need fair share housing obligations
  - ACTION(S): The DCA issued a report which calculated a Fourth Round (years 2025-2035) **Present Need** of **35** and a **Prospective Need** obligations of **119** for the Borough of Watchung.
- *January 31, 2025* - Deadline for municipalities to opt into the Affordable Housing Dispute Resolution Program (AHDRP) by adopting their determinations of Fourth Round Present Need and Prospective Need obligations by binding resolution committing the municipality to adopting a HEFSP

- ACTION(S): The bill established a deadline of 1/31/25 for municipalities to opt into the Affordable Housing Dispute Resolution Program (AHDRP or the “Program”) by adopting their determinations of Fourth Round Present Need and Prospective Need obligations by “binding resolution” of the governing body. The bill indicates that adoption of this “binding resolution” will protect the Borough from exclusionary zoning litigation (aka, “builder’s remedy lawsuits”) and the Borough would retain this protection provided it continues to comply with subsequent requirements and deadlines (e.g., filing of the Fair Share Plan, etc.). The Borough adopted such a resolution (Resolution R2 – see Appendix 1) on January 30, 2025.

Per the bill, which permits a municipality to diverge from DCA’s calculations in determining its obligations as long as it adheres to the methodology established by the bill (hence the reason why DCA’s calculated obligations are referred to as being “non-binding”), the Borough established a Prospective Need obligation of 92. This figure was determined based on a report prepared by the Boroughs affordable housing planner using the same methodology outlined in the law and utilized by the DCA. The Borough’s affordable housing planner having found numerous errors in the DCA’s evaluation of the “land factor” (specifically the identification of vacant land) determined that the Borough’s **Prospective Need** should be **92** following the methodology and factors outlined in the law.

- *February 28, 2025* - Deadline for filing challenges to a municipality’s determination of its Fourth Round Present Need and Prospective Need obligations
  - ACTION(S): After the Borough’s submittal, to the Program, of Resolution R2 (wherein the Borough established a Prospective Need obligation of 92), the Program received a challenge to the Borough’s calculation from the New Jersey Builders Association (who apparently challenged most, if not all, municipalities who established obligations that differed from DCA’s “non-binding” calculations).
- *March 31, 2025* - Deadline for the Affordable Housing Dispute Resolution Program (AHDRP) to resolve disputes over challenges to municipal fair share determinations
  - ACTION(S) - As indicated above, disputes about municipalities’ affordable housing obligations and plans to meet those obligations are to be resolved by the AHDRP.

Having received a challenge to the Borough's determination of its affordable housing obligation, the Borough engaged in settlement conference with the New Jersey Builders Association hosted by the assigned member in accordance with Directive and the statutory framework, Judge Thomas C. Miller, A.J.S.C. (Ret.), along with an independent special adjudicator affordable housing expert.

At the conclusion of the settlement conference, the parties settled on a **Prospective Need** obligation of **111** (see Appendix 2). The **Present Need** obligation of **35** was not disputed by either party.

- *June 30, 2025* - Deadline for municipalities to adopt and file a Fourth Round HEFSP with the AHDRP
  - **ACTION(S)** - A HESFP was prepared, adopted and filed with AHDRP as required.
- *August 31, 2025* - Deadline for filing challenges claiming that an adopted HEFSP is not in compliance with the Fair Housing Act and the Mount Laurel Doctrine
- *December 31, 2025* - Deadline for a challenged municipality to commit to revising its HEFSP to settle the challenge, or explain why it will not make all of the requested changes; if a dispute remains at this point, then a county-level housing judge will schedule a summary proceeding in early 2026 to resolve
  - **ACTION(S)** – The Borough participated in successful mediation with Fair Share Housing Center (the only objector to the Borough's HEFSP) facilitated by the AHDRP.
- *March 15, 2026* - Deadline for a municipality to amend its HEFSP to incorporate any changes from resolving challenges, if any, and adopt implementing ordinances and resolutions
  - **ACTION(S)** – The Borough prepared this revised HESFP which incorporates the changes agreed to during mediation.

## ***HOUSING PLAN ELEMENT***

### **CONTENTS OF A HOUSING PLAN**

The Municipal Land Use Law (“MLUL”) requires that “the housing element be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing.” The Fair Housing Act (N.J.S.A. 52:27D-310) requires a Housing Element to contain at least the following items:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated.
- A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- An analysis of the existing jobs and employment characteristics of the municipality, and a projection of the probable future jobs and employment characteristics of the municipality;
- A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing; and
- A consideration of the land that is most appropriate for construction of low and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.

Additionally, the rules require the following items:

- A map of all sites designated by the municipality for the production of low- and moderate-income housing and a listing of each site that includes its owner, acreage, lot and block. The owner, acreage, lot and block are included in each site description.

- The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites.
- Copies of necessary applications for amendments to, or consistency determinations regarding, applicable area-wide water quality management plans, including waste water management plans.
- A copy of the most recently adopted municipal master plan and where required, the immediately preceding, adopted master plan<sup>1</sup>.

## POPULATION DEMOGRAPHICS

### Historic and Project Population

The table below shows the historic population growth within the Borough since 1940. Based upon the 2020 U.S. Census data, Watchung Borough had a population of 6,452 in 2020.

As shown in the table, the time of the greatest population growth was between 1940 and 1980 during which time the Borough population increased by 350%. The 1950s, 60s and 70s saw the greatest increases in population. Since 1980, however, Borough population growth has slowed substantially, indicative of nearly fully-developed nature of the Borough.

Historic Population Growth			
Year	Population	Change	Percent
1940	1,158	-	-
1950	1,818	660	57%
1960	3,312	1,494	82%
1970	4,750	1,438	43%
1980	5,290	540	11%
1990	5,110	-180	-3%
2000	5,613	503	10%
2010	5,801	188	3%
2020	6,452	651	11%

Source: US Census

<sup>1</sup> <https://watchungnj.gov/government/master-plan>

Population projections provided by the North Jersey Transportation Planning Authority (NJTPA) project very minimal population growth in the Borough over the next few decades. The NJTPA projections are based on U.S. Census figures for population by age, sex and race, and fertility and mortality rates, and do not account for actual local conditions such as land availability. However, given the lack of available vacant land in the Borough these projections may prove to be accurate with the majority of population growth being attributable to developments intended to meet the Borough's affordable housing obligations (e.g., the 230-unit Bonnie Burn development that is currently under construction).

<b>Projected Population Growth</b>	
<b>Year</b>	<b>Population</b>
2030	6,402
2035	6,478
2040	6,531
2045	6,564
2050	6,570

Source: NJTPA

### **Age Distribution of Population**

Census data reflects an aging of the Borough's population. The median age in Watchung is 46.4. This is higher than the median age of both Somerset County (41.9) and the State of New Jersey (40.4). While the median age remains consistent with the median age in the Borough in 2010 (47) it is higher than indicated in the 2000 Census (median age of 43).

In 2010, 16.2% of the Borough population was 65 or older whereas in 2020 28% of the Borough population was 65 years of age or older (compared to 17% in both the County and State). Thirty eight percent (38%) of the Borough population was 60 years of age or older.

The Borough's under 18 population of 21% is consistent with that of the County and State. However, the 18-64 population in the Borough (51%) is noticeably lower than the County (62%) and State (61%).

Population by Age Range			
Age cohorts	Watchung	Somerset County	New Jersey
0-9	13%	11%	12%
10-19	10%	13%	13%
20-29	9%	11%	12%
30-39	9%	12%	13%
40-49	11%	14%	13%
50-59	10%	15%	14%
60-69	22%	13%	12%
70-79	9%	7%	7%
80+	7%	4%	4%

Source: US Census American Community Survey 2023

### **Race and Ethnicity**

The table below provides the racial and ethnic composition of the Borough population in comparison to the County and State as a whole, showing that the Borough is less racially and ethnically diverse.

Race and Ethnicity			
Race/ Ethnicity	Watchung	Somerset County	New Jersey
White	73%	51%	52%
Black	1%	9%	12%
Asian	11%	19%	10%
Other	1%	1%	1%
Two or more	5%	3%	3%
Hispanic	9%	17%	22%

Source: US Census American Community Survey 2023

### **Income and Poverty Status**

The median household income in the Borough is \$166,536 which is roughly 25% higher than the median household income in Somerset County (\$135,960) and roughly 50% higher than the median household income in the State (\$101,050). The per capita income in the Borough

is \$85,269 which is about 20% higher than the County (\$70,321) and around 50% higher than the State (\$53,118). The table below shows the household income characteristics of the Borough in comparison to the County and the State.

The median income for family households in Watchung is \$207,981, while the median income for non-family households is \$58,038.

Household Income			
Household Income	Watchung	Somerset County	New Jersey
Under \$50k	14%	16%	25%
\$50k-\$100k	15%	20%	24%
\$50k-\$100k	28%	31%	30%
Over \$200k	43%	33%	21%

Source: US Census American Community Survey 2023

The table below shows the percentage of the Borough population (as well as children and seniors) living below the poverty line. The percentages in the Borough are significantly lower than the County and the State as a whole.

Percentage of Population Below the Poverty Line			
Population	Watchung	Somerset County	New Jersey
All persons	2.1%	5.5%	9.8%
Children (under 18)	3%	7%	13%
Seniors (65 and over)	4%	6%	9%

Source: US Census American Community Survey 2023

### **Household Size and Household Characteristics**

There are 2,327 households in the Borough. The average household size is 2.7 persons which is comparable to that of County and State (each 2.6 persons per household). The average family size is 3.02 compared to 3.13 for New Jersey.

The table below shows the household characteristics of the Borough in comparison to that of the County and State as a whole.

<b>Population by Household Type</b>			
<b>Household Type</b>	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Married couples	72%	71%	63%
Male householder	4%	5%	6%
Female householder	12%	11%	16%
Non-family	12%	13%	15%

Source: US Census American Community Survey 2023

The table below shows the marital status of the Borough population 15 years or older in comparison to that of the County and State as a whole. Overall 62% of the Borough adult population is married compared to 57% and 51% in the County and State respectively.

<b>Marital Status</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Never Married: Male	30%	33%	37%
Never Married: Female	20%	29%	32%
Now Married: Male	64%	60%	54%
Now Married: Female	60%	54%	49%
Divorced: Male	4%	6%	7%
Divorced: Female	9%	9%	10%
Widowed: Male	2%	2%	3%
Widowed: Female	11%	8%	9%

Source: US Census American Community Survey 2023

### **Educational Attainment**

Ninety-five percent (95%) of the Borough population over the age of 25 have a high school degree (compared to 94% and 91% for the County and State respectively, while 62.8% have a Bachelor's degree or higher (compared to 57% and 43% respectively for the County and State).

Educational Attainment			
	Watchung	Somerset County	New Jersey
No degree	5%	6%	9%
High school	15%	18%	26%
Some college	18%	19%	22%
Bachelors	37%	31%	26%
Post-grad	25%	26%	17%

Source: US Census American Community Survey 2023

### **Place of Birth**

Twenty-four percent (24%) of the Borough’s population is foreign-born. This is similar to that in the County (27.5%) and the State (24.2%). The table below shows the composition of the Borough’s foreign-born population compared to the County and State as a whole. Of the foreign-born population in Watchung 77% are Naturalized US Citizens while 23% are not US Citizens..

Place of Birth for Foreign-Born Population			
	Watchung	Somerset County	New Jersey
Europe	27%	12%	13%
Asia	15%	48%	32%
Africa	1%	5%	6%
Latin America	33%	34%	48%
North America	6%	1%	1%

Source: US Census American Community Survey 2023

## **HOUSING CHARACTERISTICS**

### **General Housing Characteristics**

There are 2,429 housing units in the Borough. Ninety-six (96%) of the units are occupied compared to 97% and 92% in the County and State as a whole, respectively.

The table below shows the occupancy of the occupied housing units (i.e., owner- vs. renter-occupied) in the Borough in comparison to the County and State.

<b>Ownership of Occupied Units</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Owner-occupied	87%	74%	64%
Renter-occupied	13%	26%	36%

Source: US Census American Community Survey 2023

The table below shows the types of residential structures in the Borough compared to the County and the State. The Borough has a higher proportion of single-family homes.

<b>Types of Structure</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Single unit	83%	73%	63%
Multi-unit	17%	27%	36%
Mobile Home	0.0%	0.2%	0.9%

Source: US Census American Community Survey 2023

### **Value of Owner-Occupied Housing Stock**

The median value of owner-occupied housing is \$833,300. This is about 1.5 times for the County as a whole (\$523,900) and about double that for the State (\$427,600). The table below shows the value of owner-occupied housing units in the Borough compared to the County and State.

<b>Value of Owner-Occupied Housing Units</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Under \$100k	0.0%	1.6%	4.4%
\$100k - \$200k	1.6%	3.4%	7.9%
\$200k - \$300k	4%	9%	16%
\$300k - \$500k	1%	17%	17%
\$400k - \$500k	1%	17%	16%

Value of Owner-Occupied Housing Units			
	Watchung	Somerset County	New Jersey
\$500k - \$1M	71%	42%	32%
Over \$1M	14%	8%	4%

Source: US Census American Community Survey 2023

### Rents

The median gross rent in the Borough is \$2,571 (compared \$1,667 in New Jersey as a whole). The table below shows the breakdown of rents for occupied units in the Borough.

Occupied Units Paying Rent	
	Percent
Less than \$1,000	0%
\$1,000 - \$1,499	8%
\$1,500 - \$1,999	6%
\$2,000 - \$2,499	32%
\$2,500 - \$2,999	27%
\$3,000 and more	27%

Source: US Census American Community Survey 2023

### Bedrooms

Nearly fifty-three percent (52.6%) of the occupied housing units in Watchung have four or more bedrooms (compared to 25.8% in New Jersey as a whole). The table below shows the number of bedrooms in occupied units in Watchung

Number of Bedrooms	
	Percent
No bedroom	4%
1 bedroom	1%
2 or 3 bedrooms	42%
4 or more bedrooms	53%

Source: US Census American Community Survey 2023

**Geographic Mobility**

It would appear that the Borough population is generally less mobile than the population of the County and State as a whole. In Watchung 7.6% of the population has moved residence since the previous year compared to 9.4% and 9.9% in the County and State as a whole. The table below provides a further breakdown.

<b>Population Migration Since Previous Year</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Same house year ago	92%	91%	90%
From same county	3%	4%	5%
From different county	3%	4%	3%
From different state	0.1%	1.6%	1.8%
From abroad	1.2%	0.6%	0.8%

Source: US Census American Community Survey 2023

The table below presents similar data – that Watchung residents have resided in their existing homes longer than is typical of the County and State as a whole.

<b>Year Moved-in, By Percentage of Population</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Before 1990	9%	8%	9%
1990s	16%	13%	11%
2000s	20%	21%	21%
2010-2017	35%	31%	31%
2018-2020	16%	20%	21%
Since 2021	3%	8%	8%

Source: US Census American Community Survey 2023

## EMPLOYMENT DEMOGRAPHICS

The table below shows the industry, class and occupational characteristics of the Borough’s civilian population over 16 years of age.

Industry	Percent of Workers
Educational services and health care and social assistance	21%
Manufacturing	13%
Professional, scientific and management, and administrative and waste management services	11%
Finance, and insurance, and real estate	11%
Retail trade	10%
Other services except public administration	8%
Construction	7%
Wholesale trade	6%
Public administration	5%
Arts, entertainment, and recreation, and accommodation and food services	4%

Source: US Census American Community Survey 2023

Class of Worker	Percent of Workers
Employee of private company	68%
Self-employed in own incorporated business	12%
Private not-for-profit wage and salary	5%
Local, state and federal government	10%
Self-employed in own not incorporated business and unpaid family	5%

Source: US Census American Community Survey 2023

Occupation	Number of Workers
Management, business, science and arts occupations	1,855
Sales and office occupations	617
Service occupations	298
Production, transportation and material moving occupations	247
Natural resources, construction, and maintenance occupations	106

Source: US Census American Community Survey 2023

The mean travel time to work for Borough residents is 32 minutes, which is slightly higher than residents of the County (31,5 minutes) and State (30.9 minutes) as a whole.

<b>Means of Transportation to Work</b>			
	<b>Watchung</b>	<b>Somerset County</b>	<b>New Jersey</b>
Drove Alone	63%	66%	64%
Carpooled	1%	6%	8%
Public Transit	7%	4%	9%
Bicycle	0%	0.2%	0.3%
Walked	1%	1%	3%
Other	0	2.4%	2.2%
Worked at Home	28%	21%	15%

Source: US Census American Community Survey 2023

**Employment Projections**

According to the NJTPA, as of 2015, there were 4,989 jobs in Watchung Borough. The table below shows NJTPA’s estimates for future job growth in the Borough. It should be noted however that since these projections do not account for actual local conditions such as lack of vacant land or infrastructure limitations, the Borough anticipates far fewer jobs than the NJTPA projects.

<b>Projected Employment Growth</b>	
<b>Year</b>	<b>Employment</b>
2030	5,542
2035	5,890
2040	6,239
2045	6,390
2050	6,440

Source: NJTPA

## **CAPACITY FOR FUTURE DEVELOPMENT**

The Borough anticipates that development will be limited in the future because of limited remaining vacant land available. As a built-out community, Watchung's zoning is primarily a derivative of existing development patterns. With limited vacant land for new construction, it is expected that construction will be through private commercial or mixed-use redevelopment or residential tear-downs. The current development patterns are expected to continue with higher density commercial along Route 22 corridor, mixed use development within the Somerset Street/Watchung Avenue triangle and low-density single-family residential development within most of the Borough. The existing affordable housing developments of the Point at Watchung, Villa Dominico (a.k.a. Lakeside Villas, Schmidt Circle) are the exceptions to this pattern and both are included in the 1998 Second Round Mt. Laurel certification. Another notable exception is the Bonnie Burn site, which addressed a significant portion of the Borough's third round obligation, as this site represented the last sizeable vacant and developable site in the Borough. That development is currently under construction.

## **AVAILABILITY OF PUBLIC WATER AND SEWER INFRASTRUCTURE**

The Borough's third round HEFSP indicated that approximately 80 percent of the Borough is currently serviced by public sewer, which is treated by the Middlesex County Utilities Authority with a limited section of the Borough is sewered through the Berkeley Township Wastewater Treatment Plant in Union County. This percentage will be increased as sewer is extended to serve the Bonnie Burn site which is currently under construction. The Borough is also within the New Jersey American Water Company franchise area, which provides water to the Borough.

## **CONSTRAINTS ON DEVELOPMENT**

The primary constraint on development in Watchung is the lack of vacant land. Further, the majority of the remaining vacant lands are heavily encumbered with environmental features, such as wetlands or steep slopes, rendering them unbuildable. Additionally, many of the remaining vacant lands are also encumbered by a lack of road access.

## **STATE DEVELOPMENT AND REDEVELOPMENT PLAN**

Sites that are located in Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation.

The entirety of the Borough is within the PA2 Suburban Planning Area. The properties addressing the Borough's housing obligation are thus located within PA2 Planning Area and are also located within areas served by public water and public sewer and therefore meet these requirements.

## **FAIR SHARE PLAN**

Affordable Housing regulations define a “Fair Share Plan” as follows:

*“Fair share plan” means the plan or proposal that is in a form which may readily be adopted, with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 of P.L., by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.”*

This Fair Share Plan describes the projects, strategies and funding sources with which the Borough proposes to address its affordable housing obligation.

This affordable housing obligation consists of four parts:

- Present Need or Rehabilitation Obligation
- Prior Round Obligation (1987-1999)
- Gap Period and Third Round Obligation (1999-2025)
- Fourth Round Obligation (2025-2035)
- Unmet Need (1987-2035)

### ***PRIOR (1987-1999) AND THIRD (1999-2025) OBLIGATIONS***

The following sections describe the Borough’s Prior and Third Round Obligations, how these obligations were satisfied and the status of each of these mechanisms.

#### **Prior Round Obligation**

Watchung’s unadjusted Prior Round (1987 to 1999) obligation was a Pre-Credited need of 206 units. This obligation was adjusted via a COAH-approved Vacant Land Adjustment (“VLA”) to a Realistic Development Potential (RDP) of 169 affordable units.

**Prior Round Credits**

- Enable Inc. Group Home, (Block 5002, Lot 4), 166 Johnston Drive Extension: Enable Inc. (a.k.a. Life Skills Resource Center) is an existing group home for developmentally disabled persons and provides three bedrooms occupied by low-income residents. Under the COAH regulations, supportive and special needs housing qualify for affordable housing credits based on bedrooms. This home qualified for 3 affordable housing credits.
- Lakeside Villas at Watchung Age-Restricted Apartments (Block 4001, Lot4), Schmidt Circle. The Lakeside Villas at Watchung (a.k.a. Villa Dominico, Schmidt Circle) age-restricted development, located on Schmidt Circle off of Stirling Road, is approved for 42 age-restricted housing units, including 8 affordable units. The affordable units have been constructed and sold to eligible low- and moderate-income households.
- The Point at Watchung (Block 5601, Lot 2.01) Westbound Route 22, Crystal Ridge Drive: The Point at Watchung (a.k.a. Avalon at Watchung, Kings Crossing and Crystal Ridge Club) apartment complex, located off Route 22 and East Drive, was included in the COAH certified Second Round Housing Plan for Watchung. It contains 40 family rental affordable units with 40 rental bonus credits.
- Phillipsburg Regional Contribution Agreement: As part of the Prior Round, Watchung entered into a Regional Contribution Agreement (“RCA”) with the Town of Phillipsburg, Warren County to transfer 57 units. In exchange for rehabilitating or constructing these 57 affordable units, Phillipsburg received a total of \$1,098,108 from the Borough of Watchung.
- Tom Tom Realty, Inc. (Block 4701, Lot301), 495 Somerset Street. The Borough entered into an Agreement with TomTom Realty Inc. to deed restrict three residential apartments to moderate income affordable residential rental units. A deed restriction was recorded in 2017 and provides the Borough with 30 year deed restricted property rights to each of the three-moderate income rental affordable units. These three units are subject to all Uniform Housing Affordability Control regulations. The units have been occupied by households certified by the Borough’s administrative agent.

- *Accessory Apartment Program:* The Watchung Accessory Apartment Program is currently on-going, and it will continue to be implemented and funded to address the 10 accessory apartments which are credited to the Borough's Prior Round Obligation. The Borough adopted an Accessory Apartment Ordinance in 1998 with an amendment adopted in 2006. The FSHC settlement Agreement required that the Borough amend this regulation to facilitate easier administration review of accessory apartment applications. On December 6, 2018, the Borough adopted Ordinance #OR:18/17 which further amended the accessory apartment regulations to provide for administrative approval of low- and moderate-income accessory apartments instead of requiring conditional use approval.

The Borough has contracted with Community Grants, Planning & Housing (CGP&H), as their Administrative Agent to manage the program in accordance with the Watchung Borough Accessory Apartment Program Policies and Procedures Manual. The Borough has sufficient funds in its housing trust fund to subsidize these 10 units. As detailed in the Spending Plan, the Borough of Watchung plans to fund 10 accessory moderate-income affordable apartments at \$30,000 per unit, for a total of \$300,000 to be expended from the trust fund. Additional funding may be provided in accordance with the Borough of Watchung Affordability Assistance Program Policies and Procedures Manual to designate these units affordable for low-income households by providing a one-time payment subsidy to render the moderate-income accessory apartments affordable to low-income households. Affordability assistance funds may also be utilized to reduce costs for affordable households renting these apartments.

- *Bonnie Burn Road Redevelopment Area (Block 7402, Lots 19.01 & 19.02, Block 7403, Lots 5 & 10) 291 Bonnie Burn Road:* In 2018 the Borough Council adopted a Redevelopment Plan for the Bonnie Burn Road site which allowed for it to be developed as an inclusionary multi-family housing development of 230 apartments including 46 very low-, low- and moderate-income, non-age restricted affordable family rental units and 184 market-rate units. Five (5) of the affordable family rental apartments are included to meet the Borough's Second Round obligation. The remaining 41 affordable family rental apartments will be used to address the Borough's Third Round obligation. This development has received Preliminary and Final Site Plan Approval and is currently under construction.
- *Rental Bonus Credits:* Watchung received rental bonus credits of 43 in the prior round.

### **Third Round Obligation**

The Borough had a Third Round obligation of 396 units. This obligation was adjusted via Vacant Land Adjustment (“VLA”) to a Realistic Development Potential (RDP) of 53 affordable units which was memorialized in the Settlement Agreement with the Fair Share Housing Center (FSHC) and subsequently in the Final Judgement of Compliance and Repose of the Superior Court of New Jersey Law Division: Somerset County.

### **Third Round Credits**

- Brandywine at Mountain Ridge (Block 301, Lot 30), 676-680 Mountain Boulevard. Brandywine at Mountain Ridge is an established assisted living facility. The Third Round Plan included two (2) Medicaid beds in this facility towards the Borough’s obligation.
- Watchung Associates, LLC. (Block 301, Lot 31 & 32.01), 708 Mountain Blvd. This development received approval from the Watchung Zoning Board of Adjustment approval to construct 21 non-age restricted townhomes together with 4 affordable family rental apartment units. These affordable units consisting of 1 one-bedroom unit, 2 two-bedroom units and 1 three-bedroom unit have since been constructed and occupied.
- Bonnie Burn Road Redevelopment Area (Block 7402, Lots 19.01 & 19.02, Block 7403, Lots 5 & 10) 291 Bonnie Burn Road. As indicated previously, this development includes 46 affordable family rental units with 5 affordable family rental units being credited towards Prior Round credits and the remaining 41 affordable family rental units credited towards the Borough’s Third Round obligation.
- Rental Bonus Credits: Watchung received rental bonus credits of 14 in the third round.

<b>Prior and Third Round Credits</b>	
<b><i>Prior Round</i></b>	
<i>Prior Round Obligation (1987-1999)</i>	206
<i>Prior Round Realistic Development Potential (RDP)</i>	169
Enable (aka, Life Skills Resource Center): group home	3
Lakeside Villages at Watchung (aka, Villa Dominico): age-restricted apartments	8
Regional Contribution Agreement to Phillipsburg	57
The Point at Watchung (aka, Avalon at Watchung, Kings Crossing, Crystal Ridge Club): rental family apartments	40
Tom Tom Realty (Berlant/ Somerset Street): rental family apartments	3
Accessory Apartment Program	10
Bonnie Burn Redevelopment Area: rental family apartments	5
Rental Bonus	43
<b><i>Total</i></b>	<b>169</b>
<b><i>Balance</i></b>	<b>0</b>
<b><i>Third Round</i></b>	
<i>Third Round Obligation (1999-2025)</i>	396
<i>Third Round Realistic Development Potential (RDP)</i>	53
Brandywine at Mountain Ridge: assisted living Medicaid beds	2
Watchung Associates LLC: family rental apartments	4
Bonnie Burn Redevelopment Area: rental family apartments	41
Rental Bonus	14
<b>Total</b>	<b>61</b>
Surplus Credits to Address Future Obligations	8

## ***FOURTH ROUND OBLIGATION***

The State adopted updates to the State’s affordable housing laws in 2024. The bill (A-4/S-50) establishes a new framework for determining and enforcing municipalities’ affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine and the State’s Fair Housing Act.

The Department of Community Affairs (DCA) published “non-binding” calculations of municipalities’ Present Need and Prospective Need for affordable housing (for the “4th Round Period of 2025-2035) using a formula based on prior court decisions.

As mandated by the bill and following the methodology established by the bill, the DCA calculated the following Fourth Round (years 2025-2035) regional and municipal Present Need and Prospective Need fair share housing obligations for the Borough of Watchung:

- ***Present Need (aka, Rehab. Obligation):*** DCA has calculated Watchung’s Present Need to be 35 units for the 2025-2035 period.
- ***Prospective Need:*** DCA calculated Watchung’s Prospective Need to be 119 for the 2025-2035 period.

DCA’s determination of municipal Prospective Need affordable housing obligations was based on the following factors (as per the methodology established in the new law):

- Regional Need - Calculated based on 40% of the change in regional household growth between the 2010 and 2020 censuses ( $29,009 \times .40 = 11,604$ )
- Municipal Need - Determined based on each municipality’s regional share of three “factors”
  - o *Equalized Nonresidential Valuation Factor* - the municipal share of the regional increase in equalized nonresidential valuation between 1999-2023
  - o *Income Capacity Factor* – measures the extent to which a municipality’s income level differs from that of the lowest-income municipality in its housing region
  - o *Land Capacity Factor* – the municipal share of “developable” land in the housing region

These three factors are then averaged resulting in the “average allocation factor” which is then multiplied by the regional obligation to determine the *municipal* Prospective Need (i.e., municipal “average allocation factor” x regional obligation = municipal obligation). DCA calculated Watchung’s “average allocation factor” to be 1.03%, which when multiplied by the regional obligation of 11,604 results in a municipal Prospective Need of **119**.

Importantly, however, the bill permits a municipality to diverge from DCA’s calculations in determining its obligations as long as it adheres to the methodology established by the bill (hence the reason why DCA’s calculated obligations are referred to as being “non-binding”).

The bill established a deadline of 1/31/25 for municipalities to opt into the Affordable Housing Dispute Resolution Program (AHDRP or the “Program”) by adopting their determinations of Fourth Round Present Need and Prospective Need obligations by “binding resolution” of the governing body. The bill indicates that adoption of this “binding resolution” will protect the Borough from exclusionary zoning litigation (aka, “builder’s remedy lawsuits”) and the Borough would retain this protection provided it continues to comply with subsequent requirements and deadlines (e.g., filing of the Fair Share Plan, etc.). The Borough adopted such a resolution (Resolution R2 – see Appendix 1) on January 30, 2025.

Per the bill, which permits a municipality to diverge from DCA’s calculations in determining its obligations as long as it adheres to the methodology established by the bill (hence the reason why DCA’s calculated obligations are referred to as being “non-binding”), the Borough established a Prospective Need obligation of **92**. This figure was determined based on a report prepared by the Boroughs affordable housing planner using the same methodology outlined in the law and utilized by the DCA. The Borough’s affordable housing planner having found numerous errors in the DCA’s evaluation of the “land factor” (specifically the identification of vacant land) determined that the Borough’s prospective need should be 92 following the methodology and factors outlined in the law.

Disputes about municipalities’ affordable housing obligations and plans to meet those obligations are to be resolved by the Judiciary via a new dispute resolution program (the “Program”).

After the Borough’s submittal, to the Program, of Resolution R2 (wherein the Borough established a Prospective Need obligation of 92), the Program received a challenge to the

Borough's calculation from the New Jersey Builders Association (who apparently challenged most, if not all, municipalities who established obligations that differed from DCA's "non-binding" calculations).

The Borough engaged in settlement conference with the New Jersey Builders Association hosted by the assigned member in accordance with Directive and the statutory framework, Judge Thomas C. Miller, A.J.S.C. (Ret.), along with an independent special adjudicator affordable housing expert. At the conclusion of the settlement conference, the parties settled on a Prospective Need obligation of **111** (see Appendix 2).

### **Vacant Land Adjustment**

In light of the fact that Watchung is a fully developed community with very limited vacant land remaining for new development, the Borough has prepared a Vacant Land Adjustment (VLA) report pursuant to N.J.A.C. 5:93 4.2 (see Appendix 3). As required by N.J.A.C. 5:93-4.2, the inventory includes the block, lot, address, owner's name, current zone, gross lot acreage, and net lot acreage (after subtracting constraints such as steep slopes, wetlands, flood plains and/or wetlands) for each vacant property.

As provided by N.J.A.C. 5:93-4.2.c, lands meeting certain specified criteria may be excluded from the Inventory. The following criteria were used to further exclude vacant properties from the Inventory:

- Properties owned by a local government entity that are utilized for a public purpose other than housing;
- Vacant contiguous publicly or privately-owned parcels where the merged total could not accommodate at least 5 dwelling units at a minimum density of 6 units per acre (less than 0.83 acres);
- Environmentally sensitive lands, which limits the contiguous developable uplands area to less than 0.83 acres.

The VLA found that there exists 19.01 acres of vacant and developable acres on ten properties in the Borough.

Vacant and Developable Properties						
BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY
1101	9	282 ANDERSON ROAD	CYNTHIA LOU BECK	3.20	2.68	VACANT
1102	8	111 STANIE BRAE DRIVE	111 STANIE BRAE LLC	1.68	1.60	VACANT
1102	10	6 DEER RUN	STANIE BRAE HOLDINGS LLC	1.22	1.22	VACANT
1603	16	45 WINTER LANE	45 WINTER LANE, LLC	1.41	1.24	VACANT
4308	1.01	20 SUNBRIGHT ROAD	JHP DEVELOPMENT, LLC	1.18	1.10	VACANT
5701	6.01	ROUTE 22	BOROUGH OF WATCHUNG	6.86	1.24	VACANT
6906	13.01	35 DEVONSHIRE LANE	CONNELL, TONI	2.68	2.16	VACANT
6908	6	1055 JOHNSTON DRIVE	PATEL MAYANK VAISHALI RAOJIBHANI UR	3.64	3.62	VACANT
7001	5	67 PRICE DRIVE	FECHTNER, DR J L & SONDR	1.50	1.21	VACANT
7501	1	VALLEY ROAD	CONNELL COMPANY	14.18	2.95	VACANT

## Initial Calculation of RDP

Based on the minimum presumptive density of 6 units per acres, the Borough’s original VLA indicated that the properties can be developed with a total of 114 units. Applying a 20 percent affordable housing set-aside (1 affordable unit for each 5 units), the original VLA indicated that the properties would yield a **Realistic Development Potential (RDP)** of **23** units. With an obligation of 111 and an RDP of 23 units, the **Unmet Need would be 88**.

## REVISED Calculation of RDP

In their review of the Borough’s initial draft of its Fourth Round Housing Element and Fair Share Plan (HEFSP), the Fair Share Housing Center (FSHC) opined that the following two sites included in the Borough’s Fourth Round HEFSP should be included in the calculation of Fourth Round RDP:

- 1375 Plainfield Avenue site; and
- proposed Route 22 overlay zone.

The Borough has agreed to FSHC’s assertion that these sites should be included in the Borough’s RDP.

Below is an updated calculation of the RDP including the 1375 Plainfield Avenue site and the proposed Route 22 overlay zone. Inclusion of these sites **increase the RDP from 23 up to 36**. With an overall obligation of 111 the adjusted **unmet need is 75**.

	Acreage	Presumptive/ Approved/ Proposed Density (units/ acre)	Total Units	RDP
RDP in VLA	19.01	6	114.06	23
1375 Plainfield Avenue	2.11	11.4	24	5
New Route 22 Zone*	2.1	18	36	8
<b>NEW RDP</b>				<b>36</b>

\* This includes Block 6301 Lot 1 (1702 Route 22), as recommended by FSHC, as well as the area of the right-of-way separating the sites which could be vacated as it serves no other sites.

**Compliance Mechanisms – Prospective Need**

This section will outline how the Borough intends to address its Realistic Development Potential (RDP) of 36 units. A subsequent section will address the Unmet Need.

**Extension of Expiring Controls**

There are forty (40) low- and moderate-income, affordable housing apartment units located in the Crystal Ridge at Watchung residential apartment complex located on the property identified as Block 56.01, Lot 2.01, in the Borough of Watchung, located at One Crystal Ridge Drive. The affordable housing controls and restrictive covenants were included in a Deed Restriction, dated August 14, 2006, by and between MGD Holdings Watch, LLC (c/o Ginsburg Properties, Inc., and the New Jersey Housing & Mortgage Finance Agency (Administrative Agent), and the Borough of Watchung, recorded with the Somerset County Clerk’s office on August 22, 2006, in Deed Book 5932, at Page 616, Instrument No. 2006055212. The Deed Restriction is provided in Appendix 5.

The Deed Restriction identifies the individual affordable units which consist of 50% low and 50% moderate income units with 20% of the units consisting of 1-bedroom units, 20% consisting of 3-bedroom units with the remainder being 2-bedroom units.

The Deed Restriction provides that the control period for the affordable housing units are to be "determined separately for each dwelling unit, commencing on April 29, 2002, the date on which the first certified household occupied the unit," and shall run for a period of at least 30 years. The Certificates of Occupancy was issued for all buildings containing the affordable housing units on November 20, 2003. Thus, the Deed Restriction for each individual unit is set to expire on April 29, 2032, or November 20, 2033 (depending on the interpretation of the Deed Restriction), both dates being within the 4th Round of affordable housing compliance in New Jersey.

The Borough intends to extend the affordable housing controls, restrictions and covenants in the Deed Restriction for an additional thirty (30) years, specifically N.J.A.C. 5:80-26.12(f) (previously N.J.A.C. 5:80-26.11) – for a total of 60 years. The draft ordinance addressing this matter is provided in Appendix 6.

Pursuant to N.J.A.C. 5:80-26.12(f)(4)(ii), the Borough will authorize the use of funds from the Borough's Affordable Housing Trust Fund to pay for the extension of the controls. The funds will be paid to the owner of the Property upon receipt of a fully-executed affordable housing deed restriction in compliance with UHAC and the Borough's Affordable Housing Ordinance, along with any other documentation needed for the Borough to receive affordable housing credits for the extension of these units. The Spending Plan (provided in Appendix 7) proposes a payment of up to \$700,000 (40 units at \$17,500 per unit).

Extension of expiring controls are eligible for a 0.5 per unit bonus credit per the new affordable rules.

### 1375 Plainfield Avenue

Block 7010 Lot 9, more commonly known as 1375 Plainfield Avenue, is a 2.11-acre site containing a vacant 2-story office building. The site has received Borough approval for the redevelopment of the site with construction of a 24-unit townhouse development inclusive of five (5) affordable units (see Appendix 8). Compliance with applicable affordable housing

requirements, including the Uniform Housing Affordability Controls (UHAC), would require that the development consist of:

- 3 low-income and 2 moderate-income units
- At least one 3-bedroom affordable unit and no more than one 1-bedroom unit (with the remainder permitted to be 2-bedroom units).

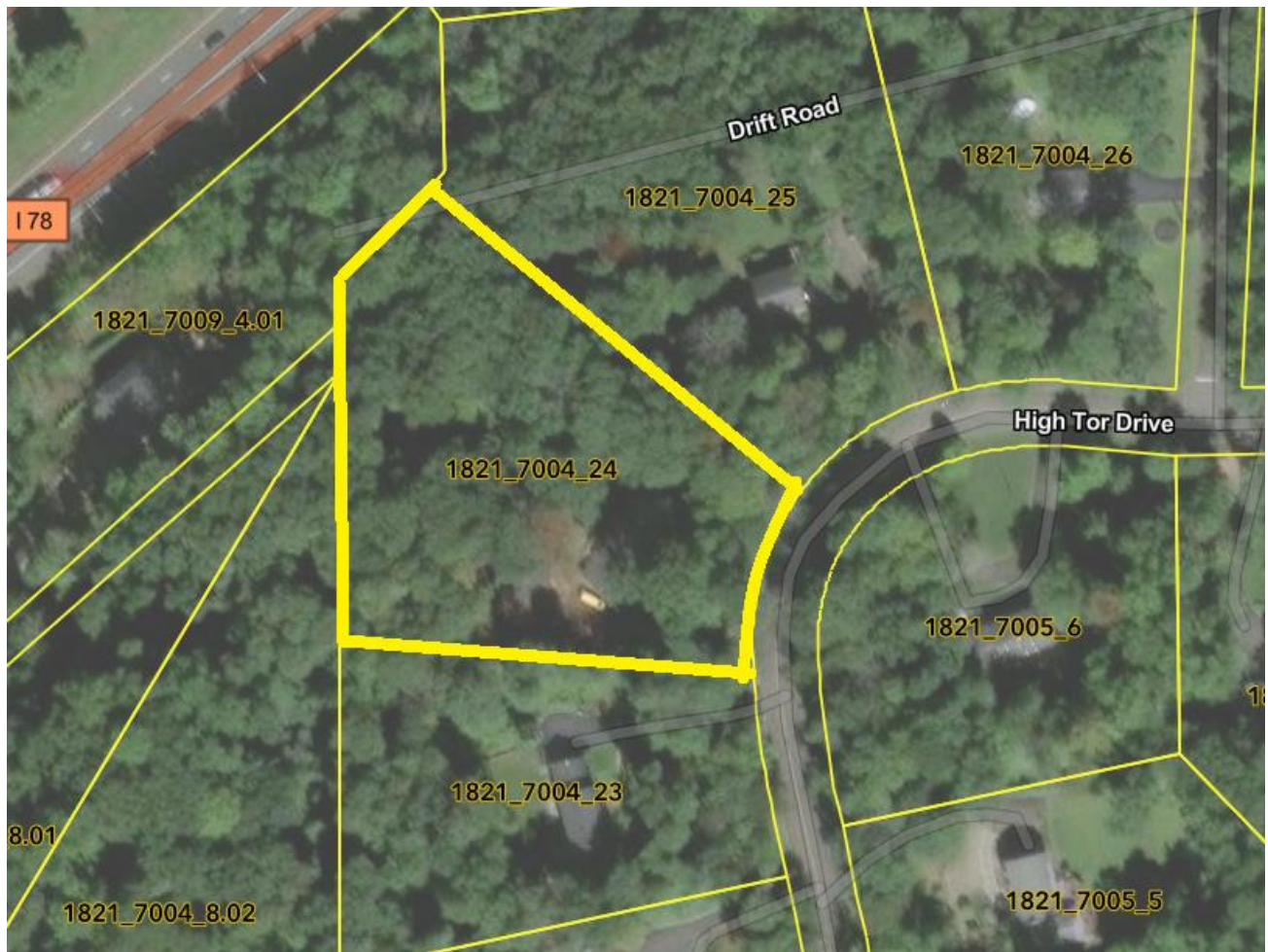
Although it is anticipated that the development will be rental, since none of the approvals specified or required that the units be rental or home-ownership, this plan has not counted this development towards rental affordable requirements.



Since the development consists of redevelopment of a site previously developed with office space, this project would be eligible for a 0.5 per unit bonus credit per the new affordable rules.

*Our House Inc. – Group Home – 103 High Tor Drive*

Our House is a non-profit, charitable organization that operates group homes for individuals with developmental disabilities. The Borough committed \$250,000 from its Affordable Housing Trust Fund towards the conversion of 103 High Tor Drive (Block 7004 Lot 24) into a six (6) bedroom group home for adults with development disabilities (see Appendix 9). In exchange for the \$250,000 Borough contribution, Our House Inc. will operate the facility as a 6-bedroom group home rented to very-low income adults with special needs.



Per the new affordable rules, the development is eligible for bonus credit equal to 1.0 per unit.

990 Somerset Street

This site received approval to convert a previously-existing mixed-use building into a residential building with three (3) apartment units, at property located within the B-B (Professional and Office) Zone located at 990 Somerset Street (Lot 3 within Block 4401). Per the conditions of the approval the applicant shall dedicate one (1) of the three (3) proposed apartment units as an affordable housing unit in compliance with all UHAC regulations. The resolution of approval can be found in Appendix 10. This development is under construction.



Since the development consists of redevelopment of a site previously developed with office space, this project would be eligible for a 0.5 per unit bonus credit per the new affordable rules.

### Prior Round Surplus

The third round plan identified an eight (8) unit surplus of credit to address future obligations.

### **Compliance Evaluation – Prospective Need**

#### Realistic Development Potential (RDP)/ Bonus Credits

The rules limit the application of bonus credits to no more than 25% of the municipality's prospective need obligations. With an adjusted prospective need of 36 units, the number of bonus credits that the Borough can claim is capped at 9. The affordable housing mechanisms proposed in this plan are eligible for bonus credits as follows:

- *Extension of Expiring Controls*: With 40 affordable units: eligible for 20 bonus credits (0.5 per unit bonus credits for extension of expiring controls)
- *1375 Plainview Avenue*: With 5 affordable units: eligible for 2.5 bonus credits (0.5 per unit bonus credits for redevelopment of an office site)
- *Our House Inc. – Group Home – 103 High Tor Drive*: With 6 affordable special needs units: eligible for 6.0 bonus credits (1.0 per unit bonus credit for development of special needs housing)
- *990 Somerset Street*: With 1 affordable unit: eligible for 0.5 bonus credits (0.5 per unit bonus credits for redevelopment of commercial space into an inclusionary residential development)

After applying the **9** bonus credits to the **36**-unit RDP, the Borough must provide its obligation through the production of at least **27** actual units (exclusive of bonus credits). This requirement will be satisfied as follows:

- *1375 Plainfield Avenue*: 5 units
- *Our House, Inc Group Home*: 6 units
- *990 Somerset Street*: 1 unit

- *Extension of Expiring Controls: 40 units*
  - *Total required: 27 units*
  - *Total provided: 52 units*

#### *Age-Restricted Affordable Housing Units*

The rules cap the number of affordable housing units restricted to seniors to 30% of the affordable housing units being provided. The plan complies as no senior affordable units are proposed in this plan.

#### *Family Affordable Housing Units*

The rules require that at least 50% of the affordable units be available to households with children (e.g., not senior units or group homes). This requirement will be satisfied as follows:

- *1375 Plainfield Avenue: 5 units*
- *990 Somerset Street: 1 unit*
- *Extension of Expiring Controls: 40 units*
  - *Total minimum required: 14 units (50% of the 27-unit minimum)/ 18 units (50% of the 36-unit RDP)*
  - *Total provided: 46 units*

#### *Rental Affordable Housing Units*

The rules require that at least 25% of the affordable units be available rental. This requirement will be satisfied as follows:

- *Our House, Inc Group Home: 6 units*
- *990 Somerset Street: 1 unit*
- *Extension of Expiring Controls: 40 units*
  - *Total required: 7 units (25% of the 27-unit minimum)/ 9 units (25% of the 36-unit RDP)*
  - *Total provided: 47 units*

Family Rental Affordable Housing Units

The rules require that at least 50% of the rental affordable units be available to households with children. This requirement will be satisfied as follows:

- *990 Somerset Street*: 1 unit
- *Extension of Expiring Controls*: 40 units
- *Total required*: 4 units (50% of the rental unit minimum based on the 27-unit minimum)/ 5 units (50% of the rental unit minimum based on the 36-unit RDP)
- *Total provided*: 41 units

Low-Income Housing Units

The rules require that at least 50% of the affordable units be low-income units (i.e., affordable to households making no more than 50% of the median household income in the housing region). This requirement will be satisfied as follows:

- *1375 Plainfield Avenue*: 3 units
- *Our House, Inc Group Home*: 6 units
- *Extension of Expiring Controls*: 20 units
- *Total required*: 14 units (50% of the 27-unit minimum)/ 18 units (50% of the 36-unit RDP)
- *Total provided*: 29 units

Very-Low-Income Housing Units

The rules require that at least 13% of the affordable units be very-low-income units (i.e., affordable to households making no more than 30% of the median household income in the housing region). This requirement will be satisfied as follows:

- *Our House, Inc Group Home*: 6 units
- *Total required*: 4 units (13% of the 27-unit minimum)/ 5 units (13% of the 36-unit

RDP)

- *Total provided: 6 units*

### Total Obligation/ Credits

The 36-unit RDP will be satisfied as follows:

- *Prior Round Surplus: 8 units*
- *Bonus Credits: 9 credits*
- *Actual Units: 52 units*
  - *1375 Plainfield Avenue: 5 units*
  - *Our House, Inc Group Home: 6 units*
  - *990 Somerset Street: 1 unit*
  - *Extension of Expiring Controls: 40 units*
- *Total required: 36*
- *Total provided: 69*

## **UNMET NEED**

As addressed above, the law provides for an adjustment of the Prospective Need obligation, based on a lack of vacant land, which divides the Prospective Need into the Realistic Development Potential (RDP), to be satisfied in the Fourth Round, and the Unmet Need, to be addressed by incentivizing opportunities for affordable housing development as land becomes available.

As part of its Second Round substantive certification, COAH approved a Vacant Land Adjustment, reducing the Prior Round obligation from 206 affordable units to RDP of 169 affordable units. This difference generates an Unmet Need of 37 affordable units which address the remainder of the Prior Round obligation.

The Borough's approved Third Round plan included a Vacant Land Adjustment that reduced the Third Round obligation from 396 affordable units to a RDP of 53 affordable units. The

RDP of 53 plus the surplus credits of 8 units, subtracted from the Third Round obligation of 396 units, result in an Unmet Need of 335 units.

This HEFSP contains a Vacant Land Adjustment (VLA) in Appendix 3. As addressed above, the Borough updated the VLA based on input from the Fair Share Housing Center. The revised VLA indicates that, with a Fourth Round Prospective Need of 111 and an RDP of 36 units, the Fourth Round Unmet Need is 75.

This total Unmet Need will be addressed through the mechanisms described below. Each of these mechanisms remain in place and are each present viable incentivizing opportunities for the creation of affordable housing, sufficient to address at least 25% of the Fourth Round Unmet Need.

*New “Route 22 Affordable Housing Overlay Zone -2”*

The Borough will create a new “Route 22 Affordable Housing Overlay District – 2” zone in the area reflected in the exhibit below. The proposed overlay zone will cover Block 6201, Lots 1, 4, 5.01, 5.02 and 6 (1692-1996-1702 Route 22) as well as the paper street within the area (the paper street serves access to no other sites than those included in this zone and does not extend beyond Green Brook). The site is currently comprised of commercially-developed sites in the Borough’s Highway Development (H-D) zone.



The new "Route 22 Affordable Housing Overlay District - 2" has been largely modeled after the Borough's existing "Route 22 Affordable Housing Overlay District" which exists in another area along Route 22 and was created to address a portion of the Borough's third round obligation. The bulk requirements of the "Route 22 Affordable Housing Overlay District – 2" zone are also consistent with relevant portions of the surrounding H-D zone including similar building and impervious coverage requirements. The draft ordinance is provided in Appendix 4.

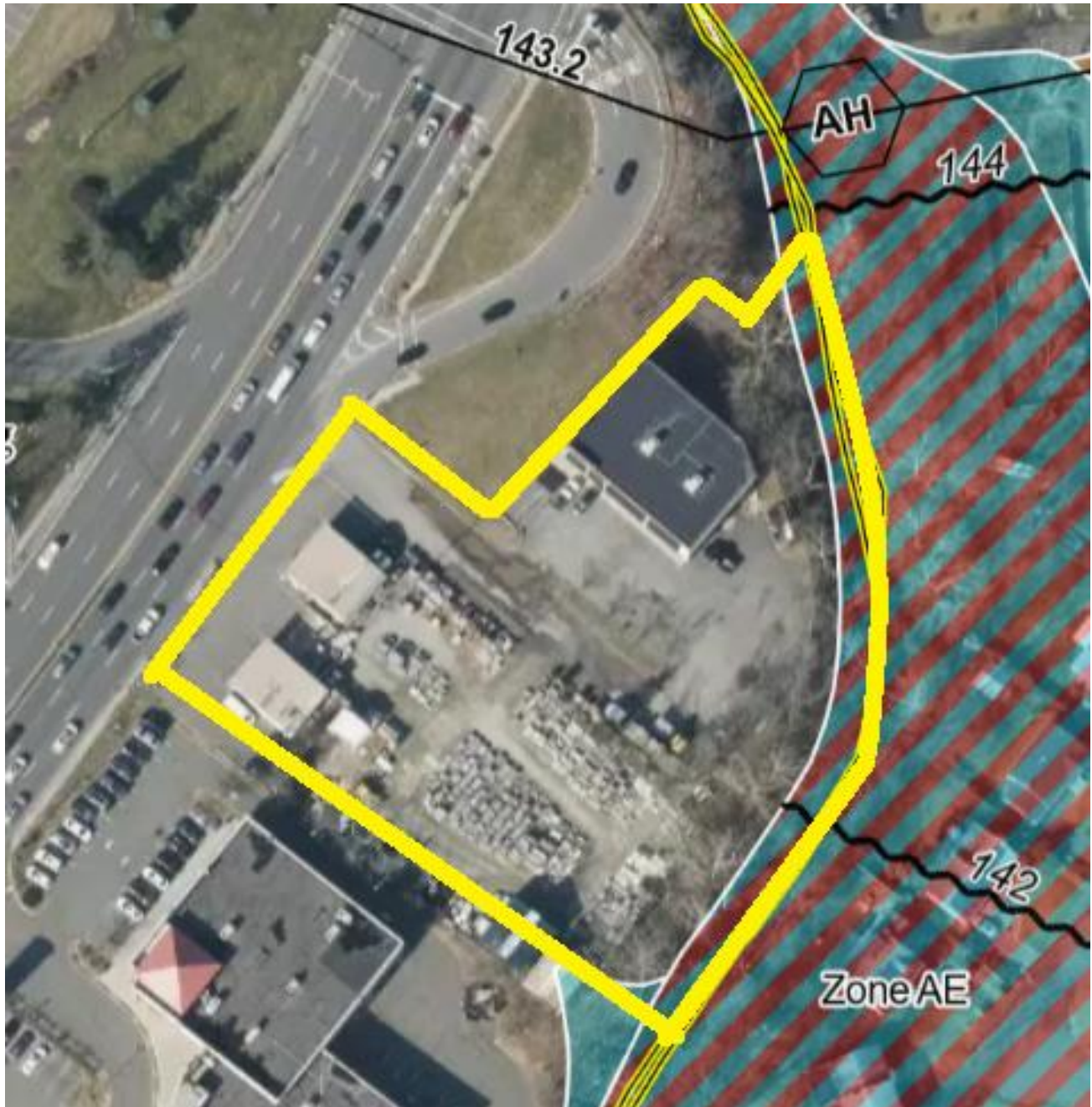
The proposed "Route 22 Affordable Housing Overlay District – 2" zone:

- Permits construction of a multi-family development at a density of 18 units per acre.
- Requires the affordable units comprise at least 20% of the total units in the development (with a overall area of approximately 2.1 acres this would result in the creation of up to eight (8) affordable units – based on the 18 unit/ acre density and the 20% affordable set-aside)
- Requires that the development be rental and not age-restricted.
- Requires that 50% of the affordable units be low-income units (with up to eight (8) affordable units this would result in the creation up to four (4) low-income units)
- Requires that 13% of the affordable units, or two (2) units, whichever is greater, be very-low-income units

At roughly 2.1 acres in size, the proposed "Route 22 Affordable Housing Overlay District – 2" zone would allow for the development of:

- A 36-unit multi-family development consisting of at least eight (8) affordable units
- Of the eight (8) affordable units: four (4) of the units would be low-income units and two (2) of the units would be very-low-income units with the remaining four (4) affordable units being available to moderate income households.

As indicated above, the site is comprised of currently-developed commercial sites along Route 22. Roughly 90% of the area has been developed with buildings and parking areas in the front of the sites along Route 22 with a large outside storage area located behind the buildings located on lot 5.02 while lot 1 is comprised of a retail building with its associated parking lot. The rear of the site is forested. The far rear of the area contains a small portion of the flood plain associated with Green Brook. The area is serviced by necessary public infrastructure (including public water and water).



The area is available, developable, suitable, and approvable. Although a title search has not been conducted there are no known encumbrances which preclude development for low- and moderate-income housing. The area has access to appropriate water and sewer infrastructure. The area is adjacent to compatible land uses, and redevelopment of the area with residential use can be done in a manner that is consistent with the environmental policies delineated in N.J.A.C. 5:93-4 (not in wetlands, flood hazard areas, steep slopes). The area can be developed for low- and moderate-income

housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. Additional analysis of the feasibility of this proposed overlay zone is provided in Appendix 11.

Since the zone would permit the redevelopment of a site previously developed with commercial use, this project would be eligible for a 0.5 per unit bonus credit per the new affordable rules.

### Existing Route 22 Affordable Housing Overlay Zone

The Borough Council adopted Ordinance #OR:18-18 establishing the Route 22 Affordable Housing Overlay District. The Overlay District encompasses the 5-acre Liccardi Ford Tract (Block 64.02, Lot 3) and a 13.7-acre portion of the Mount Saint Mary's Academy Tract (Block 64.02, Lot 5) along the northerly side of US Route 22, encompassing 18.7 acres of land. The purpose of the Route 22 Affordable Housing Overlay District is to create a realistic opportunity for the creation of low and moderate-income housing as land becomes available for development or redevelopment. Multifamily residential development requiring a percentage of low- and moderate-income housing units is now a Principal Permitted Use subject to a number of conditions.

The existing overlay zone currently permits:

- for-sale multifamily development at density of 14 units per acre with a minimum of 20% affordable sets-aside; and
- rental multifamily development at a density of 18 units per acre with a 15% affordable set-aside.

Based on input received from FSHC the Borough has agreed to the following amendments to this existing overlay zone:

- Increase the permitted density for for-sale development from 14 units/ acre up to 18 units/ acre (consistent with that already permitted for rental development).
- Increase affordable set-aside for rental developments from 15% up to 20% (consistent with that required for for-sale developments).

The draft ordinance incorporating these proposed amendments to the existing overlay zone is provided in Appendix 12.

The zone would continue to require compliance with applicable bedroom mix requirements of the Uniform Housing Affordability Controls (UHAC), that at least 50% of the affordable units created by affordable to low-income households and that at least 13% of the affordable units created be affordable to very low-income households. Affordable units created would be available to households with children,

Analysis addressing the continued feasibility of this existing overlay zone is provided in Appendix 11.

#### *Mandatory Affordable Housing Set-Aside Ordinance*

The Borough Council adopted Ordinance #OR:18/19 to establish Mandatory Affordable Housing Set-Aside requirement. This is a mandatory affordable housing set-aside zoning requirement in accordance with the FSHC Settlement Agreement and the Court Order on Fairness. The ordinance requires that all residential development of 5 or more units that occurs at a density above 6 units per acre arising as a result of a density or use variance or rezoning or approval of a redevelopment or rehabilitation plan shall be required to provide a minimum affordable housing set-aside of 20%, except that the minimum set-aside shall be 15% where affordable rental units are provided.

#### *Existing Somerset Street/Watchung Avenue Triangle Affordable Housing Overlay District*

The Borough Council adopted Ordinance #OR:19-09 establishing the Somerset Street/Watchung Avenue Affordable Housing Overlay District. This overlay district encompasses the "Triangle" area bounded by Watchung Avenue, Somerset Street and Johnston Drive. This district permits mixed-use development as a principal permitted use consisting of first floor commercial uses and residential units on the second and third floors only permitted in conjunction with affordable housing. Residential use is permitted at a density of 6 units/acre for for-sale units and 10 units/acre for rental units; with a minimum affordable housing set-aside of 20% where the affordable for sale units are provided and a minimum of 15% where affordable rental units are provided.

Based on input received from FSHC the Borough has agreed to the following amendments to this existing overlay zone:

- Increase the permitted density for for-sale development from 6 units/ acre up to 10 units/ acre consistent with that permitted for rental development.
- Increase affordable set-aside for rental developments from 15% up to 20% consistent with that required for for-sale developments.

The draft ordinance incorporating these proposed amendments to the existing overlay zone is provided in Appendix 12.

The zone would continue to require compliance with applicable bedroom mix requirements of the Uniform Housing Affordability Controls (UHAC), that at least 50% of the affordable units created by affordable to low-income households and that at least 13% of the affordable units created be affordable to very low-income households. Affordable units created would be available to households with children,

Analysis addressing the continued feasibility of this existing overlay zone is provided in Appendix 11.

### ***PRESENT NEED (REHABILITATION) SHARE***

The Present Need component of the fair share obligation is the calculated number of low- and moderate-income households living in substandard and overcrowded housing in the municipality. To satisfy this obligation most municipalities establish, fund and administer a municipal housing rehabilitation program administered by municipal staff, consultants, or a county community development agency housing improvement program. Housing rehabilitation must be available to rental properties that serve low- and moderate-income households. A municipality's Present Need obligation can alternatively be satisfied through new construction of affordable housing.

The Borough reinstated its Housing Rehabilitation Program that was implemented as part of the Borough's First and Second Round plans to meet the rehabilitation obligation. This

Housing Rehabilitation Program will continue into the future to address the Borough's 35-unit rehabilitation obligation for the fourth round. The Spending Plan has allocated \$875,000 for the 2025-2035 period to address the 35-unit obligation (at up to \$25,000 per unit).

The Borough reserves the right to conduct a further analysis of its existing housing stock and adjust the obligation if based on field observations it can be demonstrated that there are less than 35 homes in the Borough that are deficient and in need of rehabilitation.

## ***SPENDING PLAN***

The Affordable Housing Trust Fund Spending Plan is provided in Appendix 7. The Borough of Watchung intends to spend affordable housing trust fund revenues consistent with the housing programs outlined in this HEFSP. The Borough of Watchung has a balance of **\$1,700,681** as of December 31, 2024 and anticipates an additional **\$1,730,000** in revenues through 2034 for a total of **\$3,430,681**. The municipality will dedicate any excess funds or remaining balance toward the affordability assistance program. This Spending Plan demonstrates the Borough's commitment to expend these funds with respect to the following:

- Commitment to expend up to **\$250,000** towards hard costs for the housing rehabilitation program;
- Commitment to expend up to **\$300,000** towards hard costs for affordable accessory apartments;
- Commitment to expend up to **700,000** towards for the extension of expiring controls;
- Commitment to expend at least 30% of affordable housing funds on affordability assistance;
- Commitment to expend not more that 20% of development revenues for administrative costs.

## ***HOUSING ADMINISTRATION***

### ***Affordable Housing Ordinance***

The Borough's Affordable Housing Ordinance can be found in Article 28-1000 of the Boroughs Land Development Ordinance. It was comprehensively updated in 2019 by Ordinance 09/11 adopted 5/16/19 to address the requirements of the Borough's third round fair share and the affordable housing rules. The ordinance can be viewed online at: <https://ecode360.com/35413883>

The ordinance will be amended as may be necessary to address changes in applicable law and rules including the 2014 changes to the Fair Housing Act and changes to the Uniform Housing Affordability Controls (UHAC) including but not necessarily limited to: changes to control period for rental affordable units (40 years). The ordinance will be comprehensively reviewed, with the input of the Borough's Administrative Agent, with necessary updates adopted prior to the deadline established in the law.

### **Development Fee Ordinance**

The Borough's affordable housing development fee ordinance can be found in Article 28-1100 of the Borough's Land Development Ordinance (). It requires that all new residential construction make a contribution equal to 1.5% of the equalized assessed value of the construction, and requires that all new non-residential construction provide a contribution of 2.5% of the equalized assessed value of the construction, to the Borough's dedicated Affordable Housing Trust Fund. The ordinance can be viewed online at: <https://ecode360.com/35413967#35413967> .

### **Affordable Housing Trust Fund**

The Borough has an interest-bearing affordable housing trust fund in place, and consistent with the development fee ordinance discussed above, will impose development fees on all applicable residential and non-residential development, and said fees shall be deposited into the affordable housing trust fund.

The Borough will adopt by resolution an updated Spending Plan for the affordable housing trust fund. The Spending Plan will provide an outline of how the Borough intends to utilize these funds to further the goals and mechanisms established in this Plan, and in accordance with prior COAH regulations found at N.J.A.C. 5:97 et seq, and with the Fair Housing Act. This will include a summary of revenues and expenditures to date from the affordable housing trust fund, identify mechanisms to collect revenues, project anticipated future revenues and interest, as well as outline all proposed spending from the trust fund. Funds will be spent on appropriate housing activity, affordability assistance, and administrative expenses consistent with applicable prior COAH regulations.

In the event that funding sources identified in the Spending Plan prove to be inadequate to complete the affordable housing programs outlined in this Housing Plan, the Borough shall provide sufficient funding to address any such shortfalls.

**Affordability Assistance Program**

The Borough will address the minimum affordability assistance requirements of the Affordable Housing Trust Fund spending in accordance with an Affordability Assistance Program that it will be implement, consistent with the Settlement Agreement and the Spending Plan outlined above.

**Municipal Housing Liaison**

The Borough has appointed a municipal staff member as the designated Municipal Affordable Housing Liaison, who will be responsible for overseeing all affordable housing regulations and corresponding with administrative agent(s), the public, and all other related affordable housing professionals.

**Affordable Housing Administrative Agent**

The Borough will ensure that all future projects are administered by a qualified affordable housing professional and will appoint an Administrative Agent to administer all projects that do not have their own administrative agent.

Pursuant to N.J.A.C. 5:80-26.15(f), the Borough will adopt an updated Affirmative Marketing Plan to ensure that all available affordable units are marketed to the appropriate populations.

# Appendix 1

**BOROUGH OF WATCHUNG  
COUNTY OF SOMERSET, NEW JERSEY**

**RESOLUTION R2**

**RESOLUTION ESTABLISHING THE FOURTH ROUND AFFORDABLE  
HOUSING PRESENT NEED AND PROSPECTIVE NEED OBLIGATIONS  
FOR THE BOROUGH OF WATCHUNG**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) (hereinafter “Amended FHA”); and

**WHEREAS**, the Amended FHA requires the New Jersey Department of Community Affairs (“DCA”) to produce non-binding estimates of fair share obligations for municipalities throughout the State on or before October 20, 2024; and

**WHEREAS**, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

**WHEREAS**, the DCA Report calculated the Borough of Watchung’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 35 units and a Prospective Need Obligation of 119 units; and

**WHEREAS**, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support modified or corrected calculations of the Round 4 affordable housing obligations; and

**WHEREAS**, pursuant to N.J.S.A. 52:27D-304.3, a municipality’s average allocation factor is comprised of the equalized nonresidential factor, income capacity factor, and land capacity factor and shall be averaged to yield the municipality’s average allocation factor, and

**WHEREAS**, the Amended FHA further provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2 [Amended FHA], or binding court decisions” (N.J.S.A 52:27D-311(m)); and

**WHEREAS**, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

**WHEREAS**, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for the Amended FHA containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

**WHEREAS**, the Borough of Watchung and its professionals have reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development; and

**BOROUGH OF WATCHUNG  
COUNTY OF SOMERSET, NEW JERSEY**

**RESOLUTION R2**

**WHEREAS**, based on the foregoing, Watchung Borough relies on the DCA calculations of Watchung Borough's fair share obligations as modified herein to account for the Borough's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and as further set forth in detail and explained in the attached memo prepared by the Borough's affordable housing professional planner, and Watchung Borough seeks to commit to provide its fair share of 35 units present need and 92 units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

**WHEREAS**, Watchung Borough reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, Watchung Borough also reserves the right to adjust its position in the event of any rulings issued by New Jersey Superior Courts, or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

**WHEREAS**, in the event that a third party challenges the calculations provided for in this Resolution, Watchung Borough reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

**WHEREAS**, in light of the above, the Borough Committee of the Borough of Watchung finds that it is in the best interest of the Borough to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

**WHEREAS**, in accordance with AOC Directive #14-24 dated December 13, 2024, the Borough Committee of the Borough of Watchung finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of the Borough to direct the filing of an action in the form of a declaratory judgment complaint within forty-eight (48) hours after adoption of this Resolution, or by February 3, 2025, whichever is sooner;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Committee of the Borough of Watchung, County of Somerset, State of New Jersey, as follows:

1. All of the above WHEREAS clauses are incorporated into the operative clauses of this Resolution.
2. Watchung Borough hereby commits to a Round 4 Present Need Obligation of 35 units, and a Round 4 Prospective Need Obligation of 92 units, modified from the DCA's

**BOROUGH OF WATCHUNG  
COUNTY OF SOMERSET, NEW JERSEY**

**RESOLUTION R2**

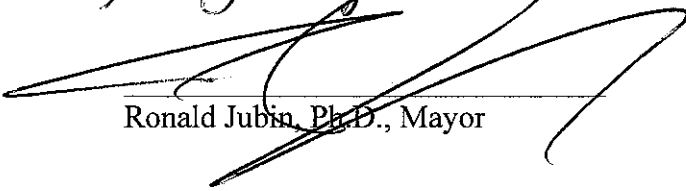
calculations as explained above and in the attached memorandum/report from the Borough's affordable housing professional planner, and subject to all reservations of rights set forth above.

3. The Borough Attorney and other appropriate Borough official is hereby authorized and directed to take all actions necessary to comply with the requirements of the Amended FHA, including the filing of a declaratory judgment complaint in Somerset County within forty-eight (48) hours after adoption of this Resolution, attaching a copy of this Resolution as an exhibit to such filing.

4. The Borough Attorney and other appropriate Borough official is hereby authorized and directed to submit and/or file a copy of this Resolution with the Program or any other such entity as may be determined to be appropriate.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

  
\_\_\_\_\_  
Christine B. Ead, Council President

  
\_\_\_\_\_  
Ronald Jubin, Ph.D., Mayor

ADOPTED: JANUARY 30, 2024  
INDEX: MISC, PLANNING,  
CC: DCA,

# Appendix 2

**PREPARED BY THE AFFORDABLE HOUSING PROGRAM:**

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In the Matter of Watchung Borough	Superior Court of New Jersey Law Division, Civil Part  Docket No. SOM-L-183-25  <b>Program Settlement Recommendation Present Need and Prospective Need</b>
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THIS MATTER, having come before the Affordable Housing Program, pursuant to the Complaint for Declaratory Judgment filed in this matter on January 31, 2025 (“DJ Complaint”) by the Petitioner, Borough of New Providence (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the Affordable Housing Dispute Resolution Program (the “Program”), seeking a certification of compliance with the FHA;

AND IT APPEARING that, on October 18, 2024, pursuant to the FHA (as amended), the New Jersey Department of Community Affairs (“DCA”) issued its report entitled “Affordable Housing Obligations for 2025-2035 (Fourth Round)”;

therein setting forth the “present need” and prospective need” obligations of all New Jersey municipalities for the Fourth-Round housing cycle (the “DCA’s Fourth Round Report”);

AND IT APPEARS that, pursuant to the DCA’s Fourth Round Report, the “present need” obligation of the Petitioner has been calculated and reported as 35 affordable units, and its “prospective need” obligation of the Petitioner has been calculated and reported as 119 affordable units, and which calculations have been deemed “presumptively valid” for purposes of the FHA;

AND IT APPEARS that the Municipality represented by counsel adopted a resolution seeking deviation from DCA numbers based on their planner's recommendation for its prospective need obligation of 92 units.

AND IT APPEARS that challenges to the Municipal calculations were timely and properly filed by the New Jersey Builders Association represented by Counsel, both challengers disputing the town proposed obligations for present and prospective need, and supporting DCA present and prospective need obligations, each challenge supported by their own expert reports;

AND IT APPEARING; The Program, assigned the case to program member Judge Thomas C. Miller, A.J.S.C. (Ret.) to handle the case in accordance with the statute and the AOC Directive, requiring the member to issue recommendations to the County Mount Laurel Judge, and appointed member of the program having

considered the submissions of counsel, the various planners report and the DCA report, and the program having conducted settlement conferences and sessions hosted by the assigned member in accordance with Directive and the statutory framework.

AND IT APPEARS THAT, the AOC appointed an independent special adjudicator affordable housing expert to work with and make recommendations to the program, and that Frank Banisch was appointed special adjudicator in this case,

AND It is appearing that the Builders Association have notified the program in writing that by their counsel that they will not participate in the settlement negotiations, and that they will not object to any settlement reached between the municipality and Fair Share Housing,

AND IT APPEARS THAT, the program hosted a settlement conference on this case, and that all parties, local officials, attorneys, and planners appeared with the goal of reaching a resolution,

AND IT APPEARS THAT, the parties have engaged in extensive settlement negotiations before, during and after the settlement conferences, with the guidance and assistance of the program member assigned to the case and the special adjudicator,

AND IT APPEARS THAT the municipality and Builders Association have reached a resolution, the settlement was place on the record, the parties circulated a

settlement agreement that will be uploaded to eCourts and that the municipal governing body has adopted or intends to adopt a resolution to accept the settlement,

AND IT APPEARS that the special adjudicator recommends accepting the settlement to the program,

AND it APPEARS THAT the terms of the settlement are as follows: The prospective need obligation for the Township shall be 111 units and that parties will now move on to the compliance phase to address the remaining issues,

For all those reasons, the program member hereby recommends an ORDER as follows:

That the proposed settlement is hereby directed to the vicinage Mount Laurel judge for review and the entry of an order as to the municipality's determination of its fair share obligation is accordance with the terms of the settlement agreement, that this settlement disposes of all the challenges filed, that the municipality retains all the protections of the law and retains immunity from exclusionary zoning litigation, and that the program retains jurisdiction for the compliance phase of accordance with the statutory frame work and the AOC directive.

**Respectfully submitted by The Program:**

By: /s/ Thomas C. Miller

Thomas C. Miller, A.J.S.C. (Ret.),

Program Chair  
Hon. Thomas C. Miller, A.J.S.C. (Ret.)

Dated: March 27, 2025

**Mount Laurel Judge:**

The Program's recommendation is  accepted for the reasons set forth by the  
Program,  accepted for the reasons set forth below,  rejected,  
 accepted/rejected in part.

**Findings of fact and conclusions of law (Rule 1:7-4(a)):**

Arm's Length settlement entered into by the parties was fair and equitable  
especially when balancing and considering the risks and costs and expense of  
litigation.

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By:



Hon. William G. Mennen, J.S.C.

Dated: 4/8/25

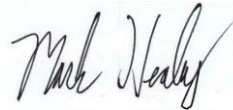
# Appendix 3

**BOROUGH OF WATCHUNG**  
SOMERSET COUNTY, NEW JERSEY

**VACANT LAND  
ADJUSTMENT  
REPORT**

REVISED: JANUARY 2026

The original of this report was signed and  
sealed in accordance with N.J.S.A. 45:14A-12.



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Mark Healey, AICP/ PP  
Professional Planner

## ***INTRODUCTION***

The Borough of Watchung contains 3,867 acres or about 6 square miles located in the northeastern corner of Somerset County, where it adjoins Union County. Within Somerset County, Watchung is bordered by Warren Township to the west, and North Plainfield Borough and Green Brook Borough to the south. Watchung is also bordered by Union County, including Berkeley Heights Township to the north and Scotch Plains Township and the City of Plainfield to the east. The Borough is also bordered to the north and south by the Watchung Mountains. Mountain Boulevard and Valley Rd traverse the entire Borough from southwest to northeast corner. Interstate 78 crosses through the northern corner and U.S. Route 22 through the southeast corner of the Borough.

Watchung is a fully-developed suburban municipality with very limited vacant land remaining for new development. This is consistent with the 2001 State Development and Redevelopment Plan Policy Map (last updated August 18, 2015) designation of the entire Borough as PA2 Suburban Planning Area.

Environmental constraints affect significant portions of the Borough. Areas containing steep slopes of 15 percent or greater are located along the Watchung Mountains at the north and south of the Borough. Wetlands are primarily located in the floodplains along the Stony Brook and Green Brook stream corridors.

This Vacant Land Inventory is prepared in order to document Watchung Borough's lack of available land capacity, pursuant to N.J.A.C. 5:93 4.2. This Inventory includes the block, lot, address, owner's name, total lot acreage and developable uplands acreage for each property. Also included in this Inventory are the following maps:

1. **Environmental Constraints Map** - showing environmentally sensitive lands that shall be excluded from the vacant land inventory, pursuant to N.J.A.C. 5:93-4.2(e)2, including the following:
  - a. *Water Bodies*: Open water bodies as mapped per NJDEP GIS data.

- b. *Wetlands*: Freshwater wetlands per NJDEP GIS data. All wetlands were assumed to be of ordinary resource value and were given a 50-foot transition area buffer.
  - c. *Riparian Zones*: Green Brook and its tributaries north of Route 22 have a 150 riparian zone since they are classified as trout maintenance waters while portions of Green Brook South of Route 22 along with the remaining regulated waters in the Borough (Stony Brook and its tributaries), are classified as non-trout and would have a 50-foot buffer.
  - d. *Flood Hazard Areas*: Special Flood Hazard Area (“SFHA”) per FEMA Flood Risk Zone mapping, which includes the AE Zone with 1-percent annual chance of flood.
  - e. *Steep Slopes*: Steep slopes of 15 percent or greater as determined by USGS topographic contours or actual topographic data where available.
2. **Existing Land Use Map** - showing the existing land uses of Watchung, displayed by the following classifications: vacant, single-family residential, apartments, commercial, industrial, parkland, other public property, and semi-public properties; also showing environmentally sensitive lands overlay, including wetlands, flood hazard areas, steep slopes, and riparian buffers.
3. **Vacant Lands Map** - showing the vacant lands identified as developable or undevelopable in accordance with COAH’s Second Round Rules.

## ***PROPERTIES EXCLUDED FROM THE VACANT LAND INVENTORY***

This Vacant Land Inventory is prepared in order to document the lack of available land capacity in Watchung. As required by N.J.A.C. 5:93-4.2, the inventory includes the block, lot, address, owner's name, current zone, total lot acreage, total acreage suitable for development (uplands) and total acreage unsuitable for development (constraints) for each vacant property based on current Borough property tax records.

As provided by N.J.A.C. 5:93-4.2.c, lands meeting certain specified criteria may also be excluded from the Inventory. The following criteria were used to further exclude vacant properties from the Inventory:

- Properties owned by a local government entity that are utilized for a public purpose other than housing;
- Vacant contiguous publicly or privately-owned parcels where the merged total could not accommodate at least 5 dwelling units at a minimum density of 6 units per acre (less than 0.83 acres);
- Environmentally sensitive lands, which limits the contiguous developable uplands area to less than 0.83 acres.

## EVALUATION OF PUBLICLY-OWNED PROPERTIES

All publicly-owned properties owned have been evaluated. The table below shows those properties that were excluded by reason of being committed to a public purpose. A number of additional publicly-owned lands, not committed to a public purpose, were further evaluated in Table 2. This analysis included 7 Borough-owned parcels.

**Table 1: Publicly-Owned Lands Committed to a Public Purpose**

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	COMMENTS
301	29	666 MOUNTAIN BLVD	BOROUGH OF WATCHUNG	19.81	N/A	Preserved open space - Ness property
302	1	65 BROOKDALE RD	BD OF ED WATCHUNG BOROUGH	30.50	N/A	Active recreation
802	1.01	60 ANDERSON ROAD	BOROUGH OF WATCHUNG	10.42	N/A	Preserved open space
1604	14	57 MOUNTAIN BLVD	BOROUGH OF WATCHUNG FIRE HOUSE	1.20	N/A	Fire department
1604	15.01	15-31 MOUNTAIN BLVD	BOROUGH OF WATCHUNG	3.42	N/A	Municipal building
1604	15.03	997-1001 SOMERSET STREET	BOROUGH OF WATCHUNG	0.31	N/A	Preserved open space - Village Green
1604	18	973-975 SOMERSET STREET	BOROUGH OF WATCHUNG	0.98	N/A	Preserved open space - park / memorial
1604	20.02	SOMERSET STREET	BOROUGH OF WATCHUNG	3.40	N/A	Preserved open space - Stony Brook
1604	20.03	SOMERSET STREET	BOROUGH OF WATCHUNG	7.30	N/A	Preserved open space - Stony Brook
1604	21	SOMERSET STREET	SOMERSET COUNTY BD OF FREEHOLDERS	1.70	N/A	Preserved open space
2401	1.01	129 STIRLING ROAD	BOROUGH OF WATCHUNG	20.17	N/A	Preserved open space - Watchung Lake
2401	1.02	MOUNTAIN BLVD	BOROUGH OF WATCHUNG	0.00	N/A	Preserved open space - Watchung Lake
2401	4.01	40 BROOKDALE ROAD	BOROUGH OF WATCHUNG	3.29	N/A	Preserved open space - Watchung Lake

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	COMMENTS
2402	1.01	10 MOUNTAIN BLVD	BOROUGH OF WATCHUNG	2.70	N/A	Preserved open space - Watchung Circle
2402	1.02	10 MOUNTAIN BLVD	BOROUGH OF WATCHUNG	0.00	N/A	Preserved open space - Watchung Circle
3101	6	50 VALLEY VIEW ROAD	BD OF ED WATCHUNG BOROUGH	6.30	N/A	Elementary school
4401	4	10 STIRLING ROAD	BOROUGH OF WATCHUNG RESCUE SQUAD	0.69	N/A	Rescue squad
4401	5	18 STIRLING ROAD	BOROUGH OF WATCHUNG	0.63	N/A	Art Center
4401	7	12 STIRLING ROAD	BOROUGH OF WATCHUNG	1.50	N/A	Library
4401	8.01	VALLEY ROAD	BOROUGH OF WATCHUNG	0.36	N/A	Preserved open space - Best Lake
4401	8.02	VALLEY ROAD	BOROUGH OF WATCHUNG	8.50	N/A	Preserved open space - Best Lake
4401	9	VALLEY ROAD	BOROUGH OF WATCHUNG	2.60	N/A	Preserved open space - Best Lake
4501	1.07	880 SOMERSET STREET	BOROUGH OF WATCHUNG	2.80	N/A	Borough DPW and Police Station
4501	1.08	840 SOMERSET STREET	BOROUGH OF WATCHUNG	6.08	N/A	Borough DPW and Police Station
4601	1	SOMERSET STREET	SOMERSET COUNTY BD OF FREEHOLDERS	2.66	N/A	Preserved open space
4701	1	770 SOMERSET STREET	BOROUGH OF WATCHUNG	0.10	N/A	Preserved open space - Veteran's Memorial
5201	3.02	JOHNSTON DRIVE	BOROUGH OF WATCHUNG	0.13	N/A	Preserved open space
5401	1	EDGEMONT ROAD	BOROUGH OF WATCHUNG	0.10	N/A	Preserved open space
5703	1	ROUTE 22	STATE OF NEW JERSEY DEPT OF TRANS	2.50	N/A	Narrow NJDOT land along Rt 22 right-of-way
6301	2	ROUTE 22	STATE OF NEW JERSEY DEPT OF TRANS	1.10	N/A	Jughandle
6402	6	ROUTE 22	STATE OF NEW JERSEY DEPT OF TRANS	2.38	N/A	Jughandle
6404	4	ROUTE 22	STATE OF NEW JERSEY DEPT OF TRANS	0.84	N/A	Narrow NJDOT land along Rt 22 right-of-way; New Providence Road

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	COMMENTS
6404	6	ROUTE 22	STATE OF NEW JERSEY DEPT OF TRANS	2.00	N/A	New Providence Road
6908	22	60 SEQUOIA DRIVE	BOROUGH OF WATCHUNG	9.56	N/A	Preserved open space - Camp Sequoia
6909	9	113 BAYBERRY LANE	BD OF ED WATCHUNG BOROUGH	15.00	N/A	elementary school
7007	1	380 PHILLIP LANE	BOROUGH OF WATCHUNG	1.50	N/A	Preserved open space - Best Lake
7402	5	BONNIE BURN ROAD	SOMERSET COUNTY BD OF FREEHOLDERS	0.28	N/A	Within intersection
7600	1	BONNIE BURN ROAD	SOMERSET COUNTY BD OF FREEHOLDERS	0.38	N/A	Within intersection, Block 7609 Lot 1
7601	2	48 BONNIE BURN ROAD	STATE OF N.J./DEPT.OF TRNSPT.	0.30	N/A	Within intersection
7601	9.02	BONNIE BURN ROAD	BOROUGH OF WATCHUNG FIRE STATION	0.75	N/A	Firehouse

## ***EVALUATION OF VACANT AND DEVELOPABLE PROPERTIES***

The table below shows the analysis of all privately-owned vacant land and all publicly-owned parcels not committed to a public purpose. The table identifies each property by block, lot, address, owner, and total (gross) acreage. The table also identifies the net acreage of each property after the environmental constraints described above are applied to each property. The “Comments” column provides commentary on each evaluated parcel including reasons for inclusion or exclusion from the Borough’s Realistic Development Potential (RDP).

After this analysis, properties were placed in one of three categories:

- **Not Vacant** – Although classified as “vacant” in the Borough tax records a large number of parcels were found not be vacant and developable for various reasons including that the parcels are: utility rights-of-way or public utility uses; property has either been recently-developed or under construction; part of an active quarry; and common property of homeowner’s associations; and part of developed sites (e.g., small portions of developed residential parcels in adjoining municipalities, parking lot of a shopping center, etc.). These properties have not been included in the RDP.
- **Insufficient size and/or no access** – These properties have not been included in the RDP principally because their net acreage (i.e., the developable portion of the site) is less than 0.83 acres in area. A number of these properties have no road access.
- **VACANT** – These properties are vacant and have a developable area (“net acres”) exceeding 0.83 acres and are thus included in the Realistic Development Potential (RDP)

Table 2: Analysis of "Vacant" Lots including Non-Committed Publicly-Owned Lands

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
101	1	816 MOUNTAIN BLVD	SIPOS, STEVEN A	0.10	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
101	3	800 MOUNTAIN BLVD	JCPL C/O FIRST ENERGY TAX DEPT	0.21	N/A	Not Vacant	Utility right of Way; insufficient gross acreage
101	4	1 HELEN STREET	STEFANYSHYN, VOLODYMYR & DIANA	0.18	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
102	7	5 MOUNTAIN COURT	WILLETT, ROBERT L & LAURA REES	0.31	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
102	8	6 MOUNTAIN COURT	SCHULTZ JR, WILLIAM & MERCEDES	0.74	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
102	9	10 MOUNTAIN COURT	STIENER, JOSEPH	0.27	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
201	7	2 GLEN EAGLES DRIVE	JCPL C/O FIRST ENERGY TAX DEPT	1.30	N/A	Not Vacant	Utility right of Way
301	3	225 SUNLIT DRIVE	CRONHEIM, MARION Z	0.01	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
301	31	TIFFANY WAY	WATCHUNG ASSOCIATES,L.L.C.	N/A	N/A	Not Vacant	Part of recently constructed townhouse development; common property
301	31 C202	202 SOPHIA COURT	WATCHUNG DEVELOPERS, LLC	N/A	N/A	Not Vacant	Part of recently constructed townhouse development; condo unit
301	31 C404	404 MARISSA LANE	WATCHUNG DEVELOPERS, LLC	N/A	N/A	Not Vacant	Part of recently constructed townhouse development; condo unit
301	31 C502	502 TIFFANY WAY	PAOLELLA, PAUL A & JUDITH	N/A	N/A	Not Vacant	Part of recently constructed townhouse development; condo unit
302	10	24 SUNLIT DRIVE	SCHAEFER, JOHN F & TERESA	1.31	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
302	24	234 SUNLIT DRIVE	SIMON, JEFFREY	0.02	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
403	11.02	ROCK ROAD EAST	NICHOLS,III,HOWARD & EGIDE	N/A	N/A	Not Vacant	Lot could not be located; believed to have been consolidated into developed lot in adjoining municipality

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
403	11.05	9 KAPPELMANN DRIVE	KENNETH F.KUNZMAN, TRUSTEE	0.40	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
403	11.06	8 KAPPELMANN DRIVE	PATEL, G. & S. & PATEL, D. & P.	0.25	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
403	11.07	10 KAPPELMANN DRIVE	HAQUE, NADEEM UI & HAQUE, NAZIA H	0.25	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
501	2	105 WASHINGTON ROCK ROAD	301 GARRETT LLC	1.76	N/A	Not Vacant	Recently constructed house
1003	14	150 STANIE GLEN ROAD	BOROUGH OF WATCHUNG	0.30	N/A	Insufficient size and/or no access	Insufficient Size
1101	9	282 ANDERSON ROAD	CYNTHIA LOU BECK	3.20	2.68	VACANT	INCLUDED IN RDP
1102	8	111 STANIE BRAE DRIVE	111 STANIE BRAE LLC	1.68	1.60	VACANT	INCLUDED IN RDP
1102	10	6 DEER RUN	STANIE BRAE HOLDINGS LLC	1.22	1.22	VACANT	INCLUDED IN RDP
1102	13	16 DEER RUN	NEAMAN, IRA & JUDITH	0.93	0.9	Not Vacant	Part of developed property in adjoining municipality
1301	1	28 DEER RUN	NEAMAN, IRA & JUDITH	0.30	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	2	36 DEER RUN	TAGLIETTI, MARCO & PAOLA RAINA	0.06	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	3	46 DEER RUN	ACKERMAN, DON & YVONNE	0.07	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	4	58 DEER RUN	RING, GEORGE & DOROTHY	0.07	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	5	70 DEER RUN	MAPLE COURT, LLC	0.08	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	6	82 DEER RUN	FERREIRA, MARIO & MARIA	0.08	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	7	94 DEER RUN	KONADU-NKATIA, ELISE	0.07	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
1301	8	100 DEER RUN	HOLDER, JANUS	0.11	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1301	9	120 DEER RUN	BALBONI, EVE & STEPHEN C	0.06	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1601	11.02	13 CAIN CIRCLE	MUNOZ, MANUEL & KETTY	0.04	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
1603	16	45 WINTER LANE	45 WINTER LANE, LLC	1.41	1.24	VACANT	INCLUDED IN RDP
1604	13	15 MOUNTAIN BLVD	BOROUGH OF WATCHUNG	1.03	0.36	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
1604	17.02	SOMERSET STREET	STATE OF NEW JERSEY DEPT OF TRAN	1.63	0.10	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
1703	2	19 WASHINGTON DRIVE	CORT, GREGORY	0.25	N/A	Not Vacant	Part of developed residential property
1801	1.01	WASHINGTON DRIVE	BOROUGH OF WATCHUNG	0.06	0.0	Insufficient size and/or no access	Excessively small and narrow lot along street right-of-way
2001	5	MAPLE STREET	SCOTTI, DONALD R	N/A	N/A	Not Vacant	Lot could not be located; there are no vacant properties on Maple Street
2201	9.02	28 ROCK AVENUE	COOPER, REGINALD & MARY B	0.39	N/A	Not Vacant	Part of developed residential property
2801	7.02	330 STIRLING ROAD	HAY, MICHAEL BRYAN & HICKS, J.,	0.21	N/A	Not Vacant	Part of developed residential property; insufficient size; no access
2801	7.03	330 STIRLING ROAD	HAY, MICHAEL BRYAN & HICKS, J.,	0.20	N/A	Not Vacant	Part of developed residential property; insufficient size; no access
2803	7.04	12 GLEN VIEW DRIVE	MANG, ELLA J	0.79	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
2803	7.05	10 GLEN VIEW DRIVE	FOX, DANIELLE	0.93	N/A	Not Vacant	Part of developed property in adjoining municipality
2804	5	9 GLEN VIEW DRIVE	LUO, SHIUH JOHN & HU, CHIACHI ANGELA	0.08	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
3601	3.02	180 STIRLING ROAD	MONETTI, STEVEN & LINDA	0.13	N/A	Not Vacant	Part of developed residential property; insufficient size
3601	3.03	180 STIRLING ROAD	MONETTI, STEVEN & LINDA	0.17	N/A	Not Vacant	Part of developed residential property; insufficient size
4001	4	STIRLING ROAD	JDN PROPERTIES III, LLC	N/A	N/A	Not Vacant	Part of townhouse development; condo unit
4001	6.01	17 FALLS VIEW	CRC COMMUNITIES AT SLEEPY HOLLOW	0.62	N/A	Not Vacant	Recently constructed house
4001	6.04	23 FALLS VIEW	CRC COMMUNITIES AT SLEEPY HOLLOW	0.54	N/A	Not Vacant	Recently constructed house
4003	5.01	175 PARK PLACE	ANISKO, JOSEPH & EUGENIA	1.41	0.14	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
4006	1	213 HILLCREST ROAD	OWUSU, EDNA & CROFFIE, JUSTICE	2.26	0.36	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
4101	1	135 HIGH OAKS DRIVE	SEGERSON, JAMES P	0.21	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
4102	12	311 HILLCREST ROAD	SIRAGUSA, JOSEPH & JENNIFER	0.14	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage; no access
4102	13	94 OLD SMALLEYTOWN RD	MASCH, VICTOR & MARINA	0.30	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage; no access
4302	1	10 RIDGE ROAD	MATINHO, JULIO S & MARIA L	N/A	N/A	Not Vacant	Lot could not be located; there are no vacant properties on Ridge Road
4303	1	115 CRESTWOOD DRIVE	SIT, CHO-WEI & HELENA	0.48	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
4303	12	336 HILLCREST ROAD	FIGUEIREDO, JOAO	0.24	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
4308	1.01	20 SUNBRIGHT ROAD	JHP DEVELOPMENT, LLC	1.18	1.10	VACANT	INCLUDED IN RDP
4309	8	106 OLD SOMERSET ROAD	REILLY, GEORGE D & DONNA MAHLSTEDT	0.85	0.74	Insufficient size and/or no access	Environmental constraints result in insufficient acreage

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
4313	1	CEDAR LANE	FREE ACRES ASSOC C/O E VENTER	8.71	2.24	Not Vacant	Not vacant, contains numerous homes
4313	2	CEDAR LANE	FREE ACRES ASSOC INC C/O C.VENTER	10.70	2.81	Not Vacant	Not vacant, communal association property
4314	1	98 CRESTWOOD DRIVE	KITSOPOULOS, GERASIMOS & TSOLAKI, I	0.20	N/A	Insufficient size and/or no access	
4402	4	65 GALLOWAE	ARROUK, RAMI & BADIN, KRISTINE	0.93	0.33	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
4404	5	OAKRIDGE LANE	UNKNOWN	N/A	N/A	Not Vacant	Lot could not be located; there are no vacant properties on Oakridge Lane
4407	1.03	247 JOHNSTON DRIVE	STONEBRIDGE DEVELOPMENT, L.L.C.	1.67	N/A	Not Vacant	Building permit for construction of new home
4501	1.03	193 JOHNSTON DRIVE	MONTI, ROBERT & ANTOINETE	0.69	0.15	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
4601	2	SOMERSET STREET	COLSON, ANDREW E & MARIBEL	1.11	0.76	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
4801	1	JOHNSTON DRIVE	VALLEY NATIONAL BANK	0.09	N/A	Not Vacant	Developed site
4901	5	430 WATCHUNG AVENUE	KOZA, JOSEPH & JULIA	0.02	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
4901	6	72 JOHNSTON DRIVE	UNKNOWN	0.07	N/A	Insufficient size and/or no access	small, excessively narrow lot, portion of developed lot in adjoining municipality with same address
5001	1	92 JOHNSTON DRIVE	ORRICO, RUSSELL A & ANNA MARIE	0.05	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5001	2	105 JOHNSTON DRIVE EXT	ENCARNACION, FRANK R	0.05	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5001	3	109 JOHNSTON DRIVE EXT	ZAMORA, DAYANA A MONGE	0.06	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
5001	4	113 JOHNSTON DRIVE EXT	ARPAIA, GIOVANNI & PHILOMENA	0.08	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5001	9.04	137 JOHNSTON DRIVE EXT	POSEHN, DAVID K & MICHELLE L	0.38	N/A	Not Vacant	Same development site as 151 Johnstone Drive Etc (B 5001 L10); insufficient gross acreage
5002	1	140 JOHNSTON DRIVE EXT	MOSSUTO GERRARD / TOMCYK STACIE	0.03	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5002	2	148 JOHNSTON DRIVE EXT	SCHWARTZ, LEONARD W., TRUST	0.09	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5101	1.02	116 JOHNSTON DRIVE	IMIOLEK, MARK	0.03	N/A	Not Vacant	Part of development on adjoining lot; insufficient gross acreage
5201	1.03	51 UPPER DRIVE	SIMPSON, JOHN Q & ALIYAH C SIMMONS	2.54	N/A	Not Vacant	Recently developed house
5201	1.04	170 JOHNSTON DRIVE EXT.	WINTER WAY ESTATES LLC	2.29	1.22	Not Vacant	New house under construction
5402	1	8 WEST DRIVE	MONTERROSO, JUAN O CASTILLO ET AL	0.45	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5402	2	20 WEST DRIVE	NORTHWOOD TIC OWNER A, LLC	0.22	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5402	10	448 JOHNSTON DRIVE	CLARKE, KEVIN	1.60	N/A	Not Vacant	House recently constructed
5601	1	28 EAST DRIVE	REGENCY VILLAGE C/O C & R REALTY	0.34	N/A	Not Vacant	Part of developed property in adjoining municipality; insufficient gross acreage
5603	9	99 EAST DRIVE	LESNIEWSKI, STANLEY	1.50	N/A	Not Vacant	House recently constructed
5701	6.01	ROUTE 22	BOROUGH OF WATCHUNG	6.86	1.24	VACANT	INCLUDED IN RDP
5702	3.03	ROUTE 22	BDA REALTY LLC,	0.96	N/A	Not Vacant	Developed site
5703	14	351 ROUTE 22	METRO STORAGE N PLAINFIELD LLC	N/A	N/A	Not Vacant	This owner/ address is Block 6.02 Lot 1; developed
5801	3	ROUTE 22	WATCHUNG UE LLC	3.19	0.26	Insufficient size and/or no access	Environmental constraints; no access

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
5901	3	ROUTE 22	WATCHUNG UE LLC	11.30	1.79	Insufficient size and/or no access	Environmental constraints; no access
6001	1	1581,1585 ROUTE 22	WATCHUNG UE LLC	1.84	N/A	Not Vacant	Developed site
6001	3	ROUTE 22	WATCHUNG UE LLC	5.15	1.45	Insufficient size and/or no access	Environmental constraints; no access
6201	5.01	ROUTE 22	1696 ROUTE 22 EAST,LLC	0.06	N/A	Not Vacant	Developed site
6201	5.02	ROUTE 22	1696 ROUTE 22 EAST,LLC	0.72	N/A	Not Vacant	Developed site
6401	1.02	908 JOHNSTON DRIVE	WATCHUNG UE LLC	6.78	0.32	Insufficient size and/or no access	Environmental constraints; no access
6402	1	1593 ROUTE 22	WATCHUNG UE LLC	0.52	N/A	Not Vacant	Developed site
6402	2.01	ROUTE 22	WATCHUNG UE LLC	2.20	N/A	Not Vacant	Developed site
6402	2.02	ROUTE 22	WATCHUNG UE LLC	0.20	N/A	Not Vacant	Developed site
6402	2.03	ROUTE 22	WATCHUNG UE LLC	1.19	0.00	Insufficient size and/or no access	Environmental constraints; no access
6402	2.04	ROUTE 22	WATCHUNG UE LLC	2.60	0.59	Insufficient size and/or no access	Environmental constraints; no access
6402	13	1040 JOHNSTON DRIVE	PAUL, SOLOMON A & ROZARIO, CANDICE	1.54	0.23	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
6403	1	ROUTE 22	PSE&G	6.15	N/A	Not Vacant	Utility right-of-way
6404	2.02	ROUTE 22	LEVIN PROPERTIES LP	1.96	N/A	Not Vacant	Developed site - shopping center
6404	2.03	ROUTE 22	LEVIN PROPERTIES LP	3.49	N/A	Not Vacant	Part of developed property - shopping center site

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
6404	2.05	BONNIE BURN ROAD	LEVIN PROPERTIES LP	0.52	N/A	Not Vacant	Part of developed property - shopping center site
6501	3	JOHNSTON DRIVE	ELIZABETHTOWN WATER/AMERICAN WATER	1.38	N/A	Not Vacant	Utility; water tower site
6701	7.02	261 VALLEY DRIVE	BRISKI, RAYMOND & JEANNE	1.38	0.42	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
6906	8	845 JOHNSTON DRIVE	CHAUDHRY, MUHAMMAD & CHAUDRI, RABEEA	1.33	0.60	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
6906	13.01	35 DEVONSHIRE LANE	CONNELL, TONI	2.68	2.16	VACANT	INCLUDED IN RDP
6908	6	1055 JOHNSTON DRIVE	PATEL MAYANK VAISHALI RAOJIBHANI UR	3.64	3.62	VACANT	INCLUDED IN RDP
6909	32	OAKWOOD ROAD	PSE&G	1.72	N/A	Not Vacant	Utility right-of-way
7001	5	67 PRICE DRIVE	FECHTNER, DR J L & SONDR	1.50	1.21	VACANT	INCLUDED IN RDP
7001	6.01	25 PRICE DRIVE	JACKSON, NORMAN & MATHIS, AMEENAH	1.50	N/A	Not Vacant	Recently subdivided, house constructed
7004	17	17 HIGH TOR DRIVE	ELIZABETHTOWN WATER/AMERICAN WATER	N/A	N/A	Not Vacant	Block, lot and address could not be located; water tower exists on developed property at 23 High Tor Drive on B7004 L18
7008	1.03	1041 PLAINFIELD AVENUE	CONNELL RICE & SUGAR CO INC	1.09	0.08	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7008	2	PLAINFIELD AVENUE	LAKATOS, SHIRLEY	0.54	0.04	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7008	3	PLAINFIELD AVENUE	CONNELL COMPANY (THE)	0.73	0.20	Insufficient size and/or no access	Environmental constraints result in insufficient acreage

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
7008	4	PLAINFIELD AVENUE	CONNELL RICE & SUGAR CO INC	0.56	0.01	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7008	5	PLAINFIELD AVENUE	PSE&G	1.84	N/A	Not Vacant	Utility right of Way
7008	30	2 DRIFT ROAD	BOROUGH OF WATCHUNG	2.22	0.74	Insufficient size and/or no access	Environmental constraints result in insufficient acreage; No access
7008	31.03	14 DRIFT ROAD	BOROUGH OF WATCHUNG	0.52	0.19	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7010	1	DRIFT ROAD	BERLANT, ROBERT D	0.01	0.01	Insufficient size and/or no access	Environmental constraints result in insufficient acreage; No access
7010	2	DRIFT ROAD	BERLANT, ROBERT D C/O ASSOC. REALTY	2.11	1.44	Insufficient size and/or no access	Environmental constraints; No access
7010	3	DRIFT ROAD	BERLANT, ROBERT D	0.59	0.59	Insufficient size and/or no access	Environmental constraints result in insufficient acreage; No access
7010	4.01	DRIFT ROAD	YANKEE INVEST. LLC C/O J BECKERMAN	2.44	0.39	Insufficient size and/or no access	Environmental constraints result in insufficient acreage; No access
7010	4.02			2.79	2.34	Insufficient size and/or no access	Environmental constraints; No access
7010	5.01	DRIFT ROAD	BROOK HILL INC	5.47	3.98	Not Vacant	Developed site
7010	5.02	DRIFT ROAD	BROOK HILL INC	5.01	2.32	Not Vacant	Developed site
7010	5.03	DRIFT ROAD	BROOK HILL INC	2.67	1.17	Not Vacant	Developed site
7011	1.01	PLAINFIELD AVENUE	STONEGATE AT WATCHUNG ASSOC INC	4.00	N/A	Not Vacant	Common property of townhouse development

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
7012	2	PLAINFIELD AVENUE	BOROUGH OF WATCHUNG	1.17	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7302	16	VALLEY ROAD	PSE&G	3.25	N/A	Not Vacant	Utility right of Way
7302	19	VALLEY ROAD	CONNELL COMPANY	0.98	N/A	Not Vacant	Developed site
7403	1	JOHNSTON DRIVE	TEXAS EASTERN TRANSMISSION CORP	1.40	N/A	Not Vacant	Utility right of Way
7403	18	JOHNSTON DRIVE	WELDON MATERIALS INC	1.46	0.29	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7501	1	VALLEY ROAD	CONNELL COMPANY	14.18	2.95	VACANT	INCLUDED IN RDP
7501	2	1085 VALLEY ROAD	200 CONNELL LLC	0.88	0.47	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7501	3	1125 VALLEY ROAD	200 CONNELL LLC	3.05	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7501	4	1201 VALLEY ROAD	CONNELL CORPORATE CENTER I LLC	1.36	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7501	7	VALLEY ROAD	50 CONNELL CORPORATE CENTER LLC	2.64	0.01	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7501	8	133 TWIN FALLS ROAD	FREEDEN,CHRIS R.	N/A	N/A	Not Vacant	Block/ lot not found in Watchung; address is a developed lot in adjoining municipality
7502	1	VALLEY ROAD	CONNELL COMPANY	1.25	1.24	Not Vacant	Borough in process of acquiring long-term lease of property for new firehouse
7601	1	BONNIE BURN ROAD	WELDON MATERIALS INC,	N/A	N/A	Not Vacant	Lot no longer exists - must have been consolidated; Entire of block is an active quarry
7601	3.01	BONNIE BURN ROAD	WELDON MATERIALS INC	N/A	N/A	Not Vacant	Lot no longer exists - must have been consolidated; Entire of block is an active quarry

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
7601	5	NEW PROVIDENCE ROAD	WELDON MATERIALS INC	63.51	N/A	Not Vacant	Active quarry
7601	8	264 BONNIE BURN ROAD	WELDON MATERIALS INC	2.98	N/A	Not Vacant	Active quarry
7601	9.01	BONNIE BURN ROAD	WELDON MATERIALS INC	6.89	N/A	Not Vacant	Active quarry
7601	10	230 BONNIE BURN ROAD	WELDON MATERIALS INC	2.48	N/A	Not Vacant	Active quarry
7601	12.02	334 BONNIE BURN ROAD	WELDON MATERIALS INC	2.37	N/A	Not Vacant	Active quarry
7601	15	368 BONNIE BURN ROAD	WELDON MATERIALS INC	0.60	N/A	Not Vacant	Active quarry
7601	20	VALLEY ROAD	WELDON MATERIALS INC	44.71	N/A	Not Vacant	Active quarry
7601	24	VALLEY ROAD	WELDON MATERIALS INC	3.02	N/A	Not Vacant	Active quarry
7601	25	VALLEY ROAD EXT	WELDON MATERIALS INC	6.65	N/A	Not Vacant	Active quarry
7601	26	VALLEY ROAD EXT	WELDON MATERIALS INC	4.73	N/A	Not Vacant	Active quarry
7601	27	1308 VALLEY ROAD EXT	WELDON MATERIALS INC	9.25	N/A	Not Vacant	Active quarry
7601	28	NEW PROVIDENCE ROAD	WELDON MATERIALS INC	12.64	N/A	Not Vacant	Active quarry
7601	29	NEW PROVIDENCE ROAD	WELDON MATERIALS INC	0.52	N/A	Not Vacant	Active quarry
7801	1	100 UNION AVENUE	100 UNION AVENUE HOLDINGS LLC	2.22	0.70	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7801	2	64 NEW PROVIDENCE ROAD	WELDON MATERIALS,INC.	0.28	0.26	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7801	3	80 NEW PROVIDENCE ROAD	WELDON MATERIALS,INC.	0.20	0.10	Insufficient size and/or no access	Environmental constraints result in insufficient acreage

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY	COMMENTS
7801	4	NEW PROVIDENCE ROAD	WELDON MATERIALS INC	1.82	0.13	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7801	5	NEW PROVIDENCE ROAD	WELDON MATERIALS INC	1.55	0.02	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7801	6	NEW PROVIDENCE ROAD	WELDON MATERIALS INC	0.56	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7801	7	NEW PROVIDENCE ROAD	CEY INC C/O IMERYS	1.83	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage
7801	8	NEW PROVIDENCE ROAD	CEY INC C/O IMERYS	0.57	0.00	Insufficient size and/or no access	Environmental constraints result in insufficient acreage

After excluding vacant properties per the exclusion criteria mentioned above, there are 10 properties remaining in the Borough of Watchung that have a Realistic Development Potential for inclusionary housing. The total developable area of these properties is 19.01 acres. The Table below identifies these properties.

**Table 3: Vacant and Developable Properties**

BLOCK	LOT	LOCATION	OWNER	ACRES GROSS	ACRES NET	CATEGORY
1101	9	282 ANDERSON ROAD	CYNTHIA LOU BECK	3.20	2.68	VACANT
1102	8	111 STANIE BRAE DRIVE	111 STANIE BRAE LLC	1.68	1.60	VACANT
1102	10	6 DEER RUN	STANIE BRAE HOLDINGS LLC	1.22	1.22	VACANT
1603	16	45 WINTER LANE	45 WINTER LANE, LLC	1.41	1.24	VACANT
4308	1.01	20 SUNBRIGHT ROAD	JHP DEVELOPMENT, LLC	1.18	1.10	VACANT
5701	6.01	ROUTE 22	BOROUGH OF WATCHUNG	6.86	1.24	VACANT
6906	13.01	35 DEVONSHIRE LANE	CONNELL, TONI	2.68	2.16	VACANT
6908	6	1055 JOHNSTON DRIVE	PATEL MAYANK VAISHALI RAOJIBHANI UR	3.64	3.62	VACANT
7001	5	67 PRICE DRIVE	FECHTNER, DR J L & SONDR	1.50	1.21	VACANT
7501	1	VALLEY ROAD	CONNELL COMPANY	14.18	2.95	VACANT

## ***CALCULATION OF REALISTIC DEVELOPMENT POTENTIAL (RDP)***

### Initial Calculation of RDP

Based on the analysis above, the Borough's original draft of the Vacant Land Adjustment Report (dated June 2025) calculated a RDP of 23 units.

- **Vacant and developable acreage:** 19.01 acres
- **Total development potential:** Based on the minimum presumptive density of 6 units per acres, the properties can be developed with a total of 114 units.
- **Affordable Housing RDP:** Applying a 20 percent affordable housing set-aside (1 affordable unit for each 5 units), the properties would yield a realistic development potential (RDP) of 23 units. With an obligation of 111 and an RDP of 23 units, the Unmet Need is 88.

### REVISED Calculation of RDP

During its mediation with the Fair Share Housing Center (FSHC), the Borough has agreed to the assertion made by the FSHC that the following two sites included in the Borough's Fourth Round HEFSP should be included in the calculation of the Borough's Fourth Round RDP:

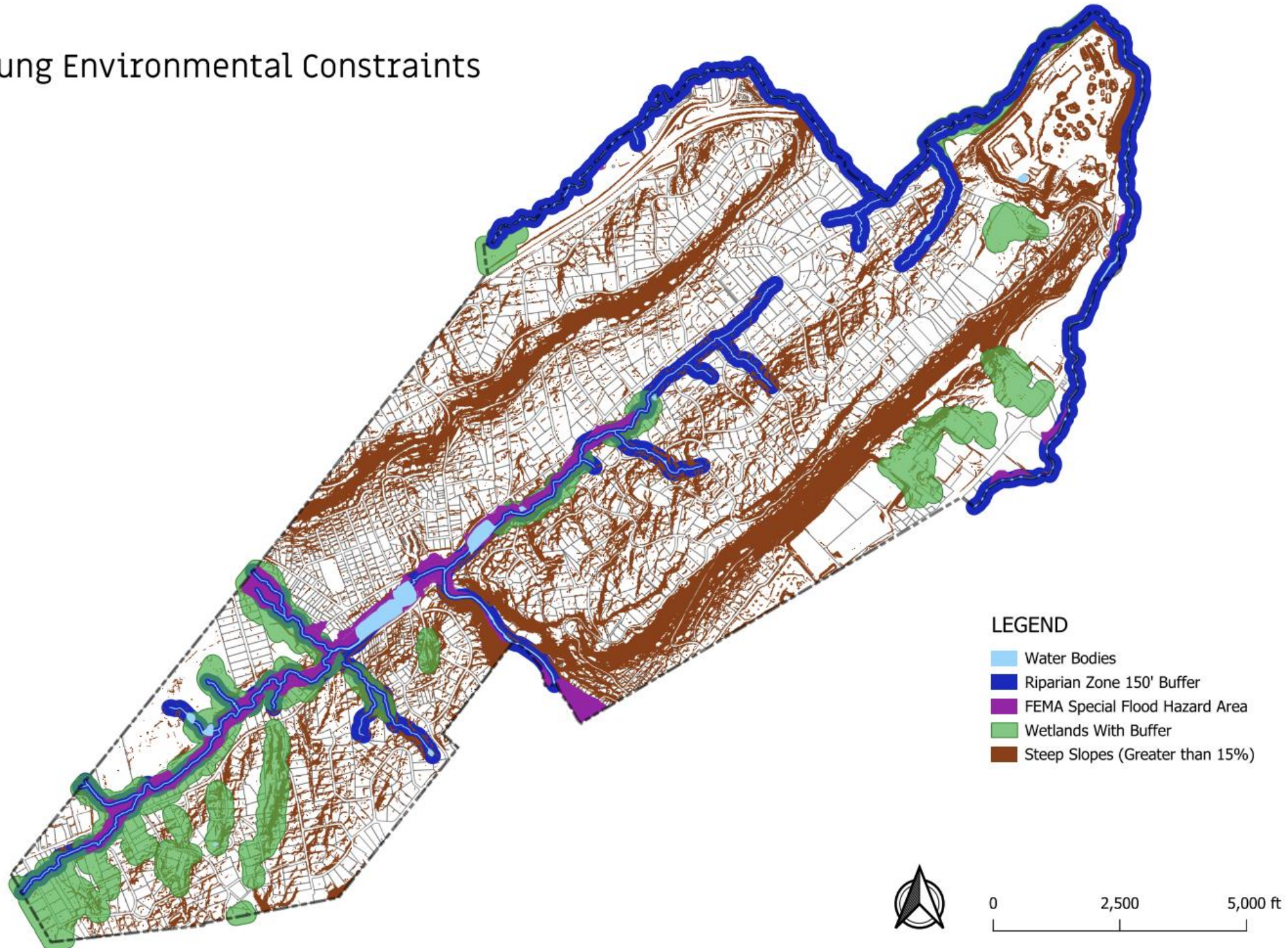
- 1375 Plainfield Avenue site; and
- proposed Route 22 overly zone.

Below is an updated calculation of the RDP including the 1375 Plainfield Avenue site and the proposed Route 22 overly zone. Inclusion of these areas would **increase the RDP from 23 up to 36**. With an overall obligation of 111 the adjusted **unmet need is 75**.

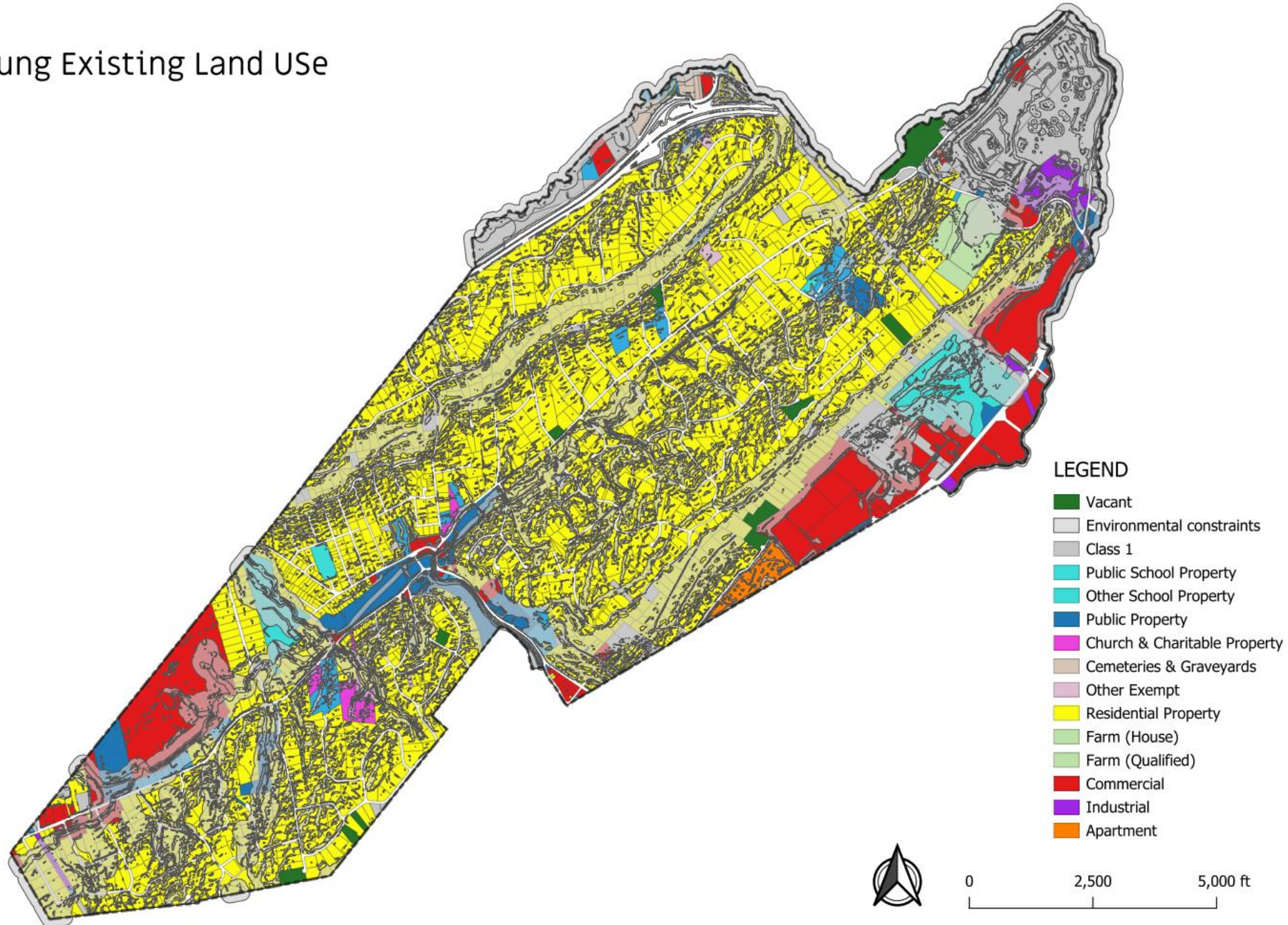
	Acreage	Presumptive/ Approved/ Proposed Density (units/ acre)	Total Units	RDP
RDP in VLA	19.01	6	114.06	23
1375 Plainfield Avenue	2.11	11.4	24	5
New Route 22 Zone*	2.1	18	36	8
NEW RDP				36

\* This includes Block 6301 Lot 1 (1702 Route 22), as recommended by FSHC, as well as the area of the right-of-way separating the sites which could be vacated as it serves no other sites.

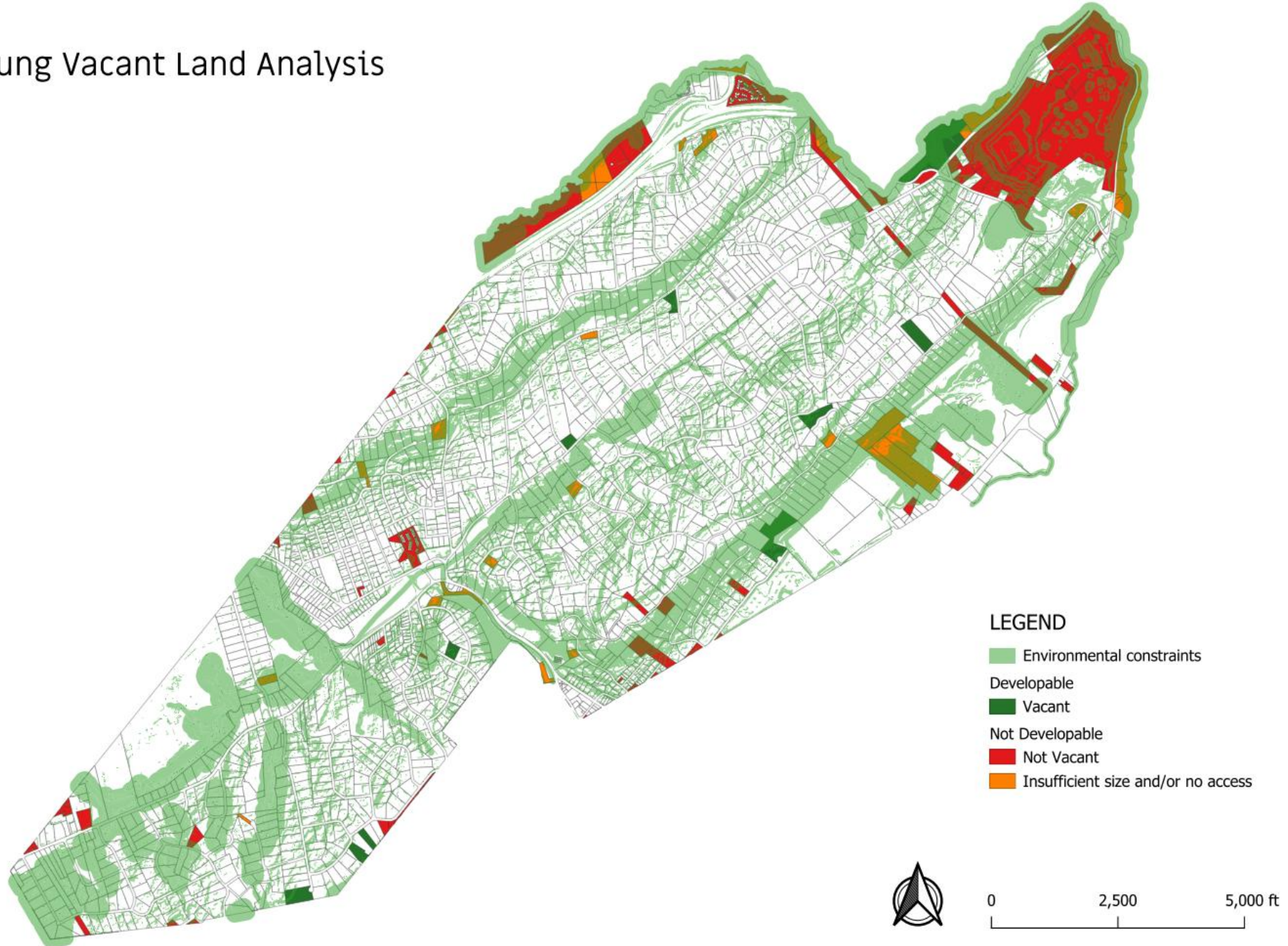
# Watchung Environmental Constraints



### Watchung Existing Land Use



# Watchung Vacant Land Analysis



# Appendix 4

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXVIII, ENTITLED "LAND DEVELOPMENT REGULATIONS OF THE BOROUGH OF WATCHUNG" TO ESTABLISH A NEW ROUTE 22 AFFORDABLE HOUSING OVERLAY DISTRICT.**

**ORDINANCE #OR:26/\_\_\_\_**

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Watchung, County of Somerset, State of New Jersey as follows:

**SECTION 1. Purpose.** The purpose of this Ordinance is to create a "Route 22 Affordable Housing Overlay District – 2" in which affordable housing development will be permitted and to provide the development regulations for permitted multi-family development that includes affordable housing units in the Borough in order to address a portion of the Borough's "fourth round" affordable housing obligation.

**SECTION 2.** A new Section 28-40 I.AC. titled "Route 22 Affordable Housing Overlay District - 2" is established as follows:

- A. Purpose:** The purpose of the "Route 22 Affordable Housing Overlay District - 2" zone is to create a realistic opportunity for the creation of very-, low- and moderate-income housing in the Borough.
- B. Area of the Borough to be included in the Overlay District:** The area shown on Exhibit 1 (Block 6201, Lots 1, 4, 5.01, 5.02 and 6), as well as the paper street in this area) shall be placed within the "Route 22 Affordable Housing Overlay District - 2" on the Borough Zoning Map.
- C. Principal Permitted Uses:** Multifamily dwelling units in one or more buildings as an inclusionary affordable residential development, provided that the provisions of subsections E. through J. below are met.
- D. Permitted Accessory Uses:**
  - 1. Uses and structures customary to the principal permitted use including, but not limited to private residential garages, parking areas, refuse and recycling areas, swimming pools, tennis courts, club houses for residents, management offices, leasing offices, walking/jogging trails, and dog runs.
  - 2. Section 28-401.B. shall apply except as modified in this Section 28-401.AC.
  - 3. All accessory uses except permitted fences, signs, bus shelters shall be located at least 10' from the property line.
  - 4. Fences and walls, in accordance with Section 28-502.
  - 5. Signs may be provided in accordance with Section 28-504, and further regulated as follows:

- a. Permitted signs shall include one project identification sign per development, residential unit and residential building identification signs, traffic and pedestrian directional signs and other public safety signs.
- b. A project identification monument sign shall be permitted at the driveway entrance to the project not exceeding 32 square feet in area and 8 feet in height including the monument base.
- c. A monument base constructed of stone or similar material and landscaped shall be provided.
- d. Building mounted identification signs or free-standing informational signs shall not exceed 4 square feet.
- e. Signs shall be constructed of stone, wood or similar materials and shall not be internally illuminated.
- f. An overall sign plan shall be submitted for review as part of the site plan application.

**E. Maximum Gross Density:** Multifamily residential development shall be permitted to have a maximum gross density of 18 units per acre.

**F. Affordable Housing Requirements:**

1. The number of affordable units (i.e., available to very-low, low- and moderate-income households) shall equal at least 20% of the total units in the development. The number of low-income units shall equal at least fifty percent (50%) of the affordable units. The number of units available to very-low income households (i.e., households earning 30 percent or less of the median income limit for the Housing Region 3) shall equal thirteen percent (13%) of the number of affordable units or two (2) units, whichever is greater.
2. The low- and moderate-income units shall be distributed throughout the development, not concentrated in any one building or area of a building.
3. The development shall be rental and shall not be age-restricted.
4. Section 28-1000 Affordable Housing Ordinance provisions shall apply.

**G. Area, Yard and Other Bulk Requirements:**

1. No principal building or structure shall be located closer than seventy-five (75) from the Route 22 right-of-way line or closer than fifteen (15) from any side lot line or twenty-five (25) feet from any rear lot line.
2. The maximum building coverage shall be forty percent (40%).
3. The maximum lot impervious coverage shall be eighty percent (80%).

**H. Maximum Building Height:**

1. No building shall exceed thirty-eight (38) feet in height and three (3) stories.
2. Building height in feet shall be the vertical distance measured from the average finished grade at the perimeter of the foundation calculated at 20-foot increments to the highest point of the building in the case of flat roofs or to the mean level between the eaves and the highest point of the roof in the case of pitched roofs.
3. Building height in stories shall be measured counting as a story the space between the upper surface of any floor and the upper surface of the next floor above it or, if there is no floor above it, then the surface between the floor and the ceiling next above it. Space under a sloped roof that is not habitable and space partially or fully below grade that is not habitable under the State Uniform Construction Code shall not be considered a story or part of a story.

**I. Roadways, Off-street Parking and Private Residential Garages:**

1. Off-street parking may be permitted under or within a building structure, provided that the building shall not exceed the maximum building height.
2. The number of required parking spaces shall be in accordance with the New Jersey Residential Site Improvement Standards (RSIS).
3. At least the first twenty-five (25) feet adjacent to any street line and fifteen (15) feet adjacent to any lot line shall not be used for parking or loading and shall be planted and maintained in lawn area or ground cover and landscaped.

**J. Other requirements.**

1. Section 28-505. Multi-Family Development standards shall include:
  - a. A minimum of five percent (5%) of the lot shall be developed as open space and recreation areas, including both active and passive recreation facilities.
  - b. Recreation facilities shall include play areas for children of all ages.
2. Section 28-600 Development Requirements and Standards shall apply unless overridden by provisions in this Ordinance.
3. Building Design Standards.
  - a. All residential buildings shall have similar facade treatments so that they are compatible with one another. Additionally, all sides of any one residential building shall have similar facade treatments.
  - b. Long buildings shall be broken into facade segments. Any building with a length of over 100 feet shall have off-set facades at least every 30 feet created with set-back or bump-out sections being 1.5 feet or more in depth.

- c. A variety of quality materials and architectural features are encouraged to, for example, distinguish the first floor from higher floors, to distinguish top floors from lower floors, and to highlight building entrances.
- d. Rooftop HV AC units, if employed, shall be shielded by parapet walls or roof insets if a sloped roof is utilized.
- e. Foundation plantings shall be utilized to soften the appearance of first floor and lower walls.

**SECTION 3.** The Borough of Watchung Zoning Map shall be amended to show the "Route 22 Affordable Housing Overlay District -2" as described herein.

**SECTION 4.** The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Somerset County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15, including to the Clerk of adjoining municipalities. The Borough Clerk shall execute Affidavits of Proof of Service of the notices required by this Section 5, and shall keep the Affidavits on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

**SECTION 5.** After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Watchung for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within thirty-five (35) days after referral, a report including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**SECTION 6.** If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

**SECTION 7.** All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 8.** This Ordinance shall take effect immediately upon: (i) adoption; (ii) publication in accordance with the laws of the State of New Jersey; and (iii) filing of the final form of adopted Ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16.

EXHIBIT 1



# Appendix 5

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

To Rental Property

With Covenants Restricting Rentals, Conveyance and Improvements  
And Requiring Notice of Foreclosure and Bankruptcy

record and return:  
21678  
GENERAL LAND ABSTRACT CO  
2 RESEARCH WAY  
PRINCETON NJ 08540

THIS DEED RESTRICTION, entered into as of this 14<sup>th</sup> day of August, 2006, by and between the New Jersey Housing & Mortgage Finance Agency ("Administrative Agent"), or its successor, acting on behalf of The Borough of Watchung ("Municipality"), with offices at 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085, and MGD Holdings Watch, LLC, a New York limited liability company having offices at c/o Ginsburg Properties, Inc., 245 Saw Mill River Road, 2<sup>nd</sup> Floor, Hawthorne, New York 10532, the developer/sponsor (the "Owner") of a residential low- or moderate-income rental project (the "Project"):

WITNESSETH

BRETT A. RADI COUNTY CLERK  
SOMERSET COUNTY, NJ  
2006 AUG 22 11:00:14 AM  
BK: 5932 PG: 616-621  
INSTRUMENT # 2006055212

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property



The Property consists of all of the land, and a portion of the improvements thereon, that is located in the municipality of Watchung, County of Somerset, State of New Jersey, and described more specifically as Block No. 56.01, Lot No. 2:01, and known by the street address:

Crystal Ridge Club  
One Crystal Ridge Drive  
Watchung, New Jersey

And more specifically designated as: See Schedule A attached hereto and made a part hereof

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing on April 29, 2002, the

date on which the first certified household occupied the unit, and shall and expire as determined under the Uniform Controls, as defined below.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years; and
  2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant or contract.
- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the "Uniform Controls").
  - B. The Property shall be used solely for the purpose of providing rental dwelling units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.
  - C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
  - D. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
  - E. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

#### Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Municipality and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent and the Municipality shall have all

updated May 2006

remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

updated May 2006

**SCHEDULE A**  
**AFFORDABLE APARTMENTS AT CRYSTAL RIDGE CLUB**

<b><u>ADDRESS</u></b>	<b><u># OF BEDROOMS</u></b>	<b><u>LOW/MODERATE</u></b>
4102 Club Court	2	Low
4103 Club Court	2	Low
5102 Emerald Drive	2	Low
5103 Emerald Drive	2	Low
6006 Crystal Ridge Drive	3	Low
6007 Crystal Ridge Drive	1	Low
6102 Crystal Ridge Drive	2	Low
6103 Crystal Ridge Drive	2	Low
7006 Summit Way	3	Low
7007 Summit Way	1	Low
7102 Summit Way	2	Low
7103 Summit Way	2	Low
8006 Summit Way	3	Low
8007 Summit Way	1	Low
8102 Summit Way	2	Low
8103 Summit Way	2	Low
9006 Summit Way	3	Low
9007 Summit Way	1	Low
9102 Summit Way	2	Low
9103 Summit Way	2	Moderate
10006 Crystal Ridge Drive	3	Moderate
10007 Crystal Ridge Drive	1	Moderate
10102 Crystal Ridge Drive	2	Low
10103 Crystal Ridge Drive	2	Moderate
11006 Crystal Ridge Drive	3	Moderate
11007 Crystal Ridge Drive	1	Moderate
11102 Crystal Ridge Drive	2	Moderate
11103 Crystal Ridge Drive	2	Moderate
12002 Crystal Ridge Drive	2	Moderate
12003 Crystal Ridge Drive	2	Moderate
12106 Crystal Ridge Drive	3	Moderate
12107 Crystal Ridge Drive	1	Moderate
13102 Diamond Court	2	Moderate
13103 Diamond Court	2	Moderate
14002 Crystal Ridge Drive	2	Moderate
14003 Crystal Ridge Drive	2	Moderate
14106 Crystal Ridge Drive	3	Moderate
14107 Crystal Ridge Drive	1	Moderate
15102 Diamond Court	2	Moderate
15103 Diamond Court	2	Moderate

updated May 2006

IN WITNESS WHEREOF, the Administrative Agent and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

NEW JERSEY HOUSING & MORTGAGE FINANCE AGENCY

BY: Marge DellaVecchia  
Name:  
Title: Exec. Director

MGD HOLDINGS WATCH, LLC

By: MGD Properties, LLC  
Its Sole Member

By: Martin Ginsburg  
Name: Martin Ginsburg  
Title: Manager

APPROVED BY THE BOROUGH OF WATCHUNG, [Municipality]

BY: Albert S. Ellis  
Name: Albert S. Ellis  
Title: Mayor

ACKNOWLEDGEMENTS

On this the 7<sup>th</sup> day of August, 2006 before me came Marge DellaVecchia, to me known and known to me to be the Administrative Agent for The Borough of Watchung [Municipality], who states that (s)he has signed said Agreement on behalf of said Municipality for the purposes stated therein.

Melinda J. Sciarrotta  
NOTARY PUBLIC Melinda J. Sciarrotta  
A Notary Public of New Jersey  
My Commission Expires 3/24/2009

On this the 7<sup>th</sup> day of August, 2006 before me came Martin Ginsburg, to me known and known to me to be the manager of MGD Properties, LLC, the sole member of MGD Holdings Watch, LLC, the Owner of the Property, who states that (s)he has signed said Agreement for the purposes stated therein.

ELISE J. KESSLER  
Notary Public, State of New York  
No. 02KE4859820  
Qualified in Westchester County  
Commission Expires April 28, 20 10

Elise J. Kessler  
NOTARY PUBLIC

On this the 14<sup>th</sup> day of August, 2006 before me came Albert S. Ellis known and known to me to be Mayor of The Borough of Watchung, the Municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein

Michelle DeRocco  
NOTARY PUBLIC

MICHELLE DeROCCO  
A Notary Public of New Jersey  
My Commission Expires: June 11, 2008



BRETT A. RADI  
SOMERSET COUNTY CLERK  
20 GROVE STREET  
P.O. BOX 3000  
SOMERVILLE, NJ 08876-1262

\*\*\*\*\*

Recorded: 08/22/2006 11:00:14 AM  
Book: OPR 5932 Page: 616-621  
Instrument No.: 2006055212  
AGTDEED 6 PGS \$70.00

Recorder: BALLIROJ

\*\*\*\*\*

**DO NOT DISCARD**



2006055212

# Appendix 6

**BOROUGH OF WATCHUNG  
ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE AUTHORIZING THE EXTENSION OF AFFORDABLE  
HOUSING CONTROLS – CRYSTAL RIDGE AT WATCHUNG.**

**WHEREAS**, there are forty (40) low- and moderate-income, affordable housing apartment units located in the Crystal Ridge at Watchung residential apartment complex located on the property identified as Block 56.01, Lot 2.01, in the Borough of Watchung, located at One Crystal Ridge Drive (the “Property”); and

**WHEREAS**, the affordable housing controls and restrictive covenants were included in a Deed Restriction, dated August 14, 2006, by and between MGD Holdings Watch, LLC (c/o Ginsburg Properties, Inc., and the New Jersey Housing & Mortgage Finance Agency (Administrative Agent), and the Borough of Watchung, recorded with the Somerset County Clerk’s office on August 22, 2006, in Deed Book 5932, at Page 616, Instrument No. 2006055212 (the “Deed Restriction”); and

**WHEREAS**, the Deed Restriction provided the following units be subject to affordable rental regulations to low- or moderate-income households in accordance with the Borough’s Affordable Housing Ordinance:

<u>Crystal Ridge at Watchung</u>	
<u>Unit/Address</u>	<u>Low / Moderate Income</u>
4102 Club Court (2 b/r)	Low
4103 Club Court (2 b/r)	Low
5102 Emerald Drive (2 b/r)	Low
5103 Emerald Drive (2 b/r)	Low
6006 Crystal Ridge Drive (3 b/r)	Low
6007 Crystal Ridge Drive (1 b/r)	Low
6102 Crystal Ridge Drive (2 b/r)	Low
6103 Crystal Ridge Drive (2 b/r)	Low
7006 Summit Way (3 b/r)	Low
7007 Summit Way (1 b/r)	Low

7102 Summit Way (2 b/r)	Low
7103 Summit Way (2 b/r)	Low
8006 Summit Way (3 b/r)	Low
8007 Summit Way (1 b/r)	Low
8102 Summit Way (2 b/r)	Low
8103 Summit Way (2 b/r)	Low
9006 Summit Way (3 b/r)	Low
9007 Summit Way (1 b/r)	Low
9102 Summit Way (2 b/r)	Low
9103 Summit Way (2 b/r)	Moderate
10006 Crystal Ridge Drive (3 b/r)	Moderate
10007 Crystal Ridge Drive (1 b/r)	Moderate
10102 Crystal Ridge Drive (2 b/r)	Low
10103 Crystal Ridge Drive (2 b/r)	Moderate
11006 Crystal Ridge Drive (3 b/r)	Moderate
11007 Crystal Ridge Drive (1 b/r)	Moderate
11102 Crystal Ridge Drive (2 b/r)	Moderate
11103 Crystal Ridge Drive (2 b/r)	Moderate
12002 Crystal Ridge Drive (2 b/r)	Moderate
12003 Crystal Ridge Drive (2 b/r)	Moderate
12106 Crystal Ridge Drive (3 b/r)	Moderate
12107 Crystal Ridge Drive (1 b/r)	Moderate
13102 Diamond Court (2 b/r)	Moderate
13103 Diamond Court (2 b/r)	Moderate
14002 Crystal Ridge Drive (2 b/r)	Moderate
14003 Crystal Ridge Drive (2 b/r)	Moderate
14106 Crystal Ridge Drive (3 b/r)	Moderate
14107 Crystal Ridge Drive (1 b/r)	Moderate
15102 Diamond Court (2 b/r)	Moderate
15103 Diamond Court (2 b/r)	Moderate

; and

**WHEREAS**, the Deed Restriction provides that the control period for the affordable housing units are to be "determined separately for each dwelling unit, commencing on April 29, 2002, the date on which the first certified household occupied the unit," and shall run for a period of at least 30 years; and

**WHEREAS**, the Certificates of Occupancy for was issued for all buildings containing the affordable housing units on November 20, 2003; and

**WHEREAS**, the Deed Restriction for each individual unit is set to expire on April 29, 2032, or November 20, 2033 (depending on the interpretation of the Deed Restriction), both dates being within the 4<sup>th</sup> Round of affordable housing compliance in New Jersey; and

**WHEREAS**, pursuant to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, *et seq.* (“UHAC”), the Mayor and Borough Council of the Borough of Watchung desire to extend the affordable housing controls, restrictions and covenants in the Deed Restriction for an additional thirty (30) years, specifically N.J.A.C. 5:80-26.12(f) (previously N.J.A.C. 5:80-26.11); and

**WHEREAS**, extending the affordable housing controls on these units will help address the Borough’s 4<sup>th</sup> Round affordable housing obligations; and

**WHEREAS**, pursuant to N.J.A.C. 5:80-26.12(f)(4)(ii), the Mayor and Borough Council herein authorizes the use of funds from the Borough’s Affordable Housing Trust Fund, as necessary, to pay for the extension of the controls; and

**WHEREAS**, the Borough Chief Financial Officer has certified that the funds are available in the Borough’s Affordable Housing Trust Fund; and

**WHEREAS**, the Mayor and Borough Council of the Borough of Watchung find it to be in the best interest of the Township to extend the affordable housing controls on the forty (40) deed restricted low- and moderate-income apartments on the Property for an additional thirty (30) years subject to the applicable provisions of UHAC and the Borough’s Affordable Housing Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Watchung, in the County of Somerset and State of New Jersey as follows:

**Section 1.** The affordable housing controls on the forty (40) deed restricted low- and moderate-income apartments on the Property that are set to expire on April 29, 2032 or November

20, 2033, are hereby extended for an additional thirty (30) years, subject to the applicable provisions of UHAC and the Borough's Affordable Housing Ordinance.

**Section 2.** By separate action the Township will authorize an appropriation of monies, as necessary, for the extension of affordable housing controls for these units in compliance with N.J.A.C. 5:80-26.12(f)(4)(ii), from the Borough's Affordable Housing Trust Fund to be paid to the owner of the Property upon receipt of a fully-executed affordable housing deed restriction in compliance with UHAC and the Borough's Affordable Housing Ordinance, along with any other documentation needed for the Borough to receive affordable housing credits for the extension of these units.

**Section 3.** All appropriate Borough officials and professionals are hereby authorized to take all necessary action(s) to effectuate this Ordinance, including but not limited to the execution of any agreement(s) with the owner of the Property, and the UHAC compliant deed restriction(s) required for the extension of the affordable housing controls set forth herein.

**BE IT FURTHER ORDAINED** by the Council of the Borough of Watchung that should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this Ordinance are hereby declared to be severable; and

**BE IT FURTHER ORDAINED** by the Council of the Borough of Watchung that in the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Watchung, the provisions hereof shall be determined to govern, and the inconsistencies of the prior ordinance are hereby repealed. All other parts, portions and provisions

of the Ordinances of the Borough of Watchung are hereby ratified and confirmed, except where inconsistent with the terms hereof; and

**BE IT FURTHER ORDAINED** by the County of the Borough of Watchung that within five (5) days after its adoption by the Council, this Ordinance shall be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40A:60-5(d). If the Mayor fails to return this Ordinance with either his approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved; and

**BE IT FURTHER ORDAINED** by the Council of the Borough of Watchung that this Ordinance shall take effect upon final passage and publication according to law; and approval by the Mayor pursuant to N.J.S.A. 40A:60-5(d).

Introduced by:

Passed:

Published:

Adopted:

ATTEST:

BOROUGH OF WATCHUNG

\_\_\_\_\_  
Edith Gil, Borough Clerk

By: \_\_\_\_\_  
Ronald Jubin, Mayor

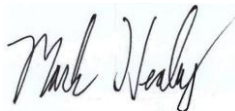
# Appendix 7

**BOROUGH OF WATCHUNG**  
SOMERSET COUNTY, NEW JERSEY

**AFFORDABLE  
HOUSING  
SPENDING PLAN**

REVISED: JANUARY 2026

The original of this report was signed and sealed in accordance with N.J.S.A. 45:14A-12.



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Mark Healey, AICP/ PP  
Professional Planner

## INTRODUCTION

The Borough of Watchung, Somerset County, has prepared a Housing Element and Fair Share Plan ('HEFSP') in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the affordable housing regulations of the New Jersey Department of Community Affairs (the Department).

A development fee ordinance creating a dedicated revenue source for affordable housing was approved by the Department on September 10, 1997 and adopted by the Borough of Watchung on October 9, 1997. The current affordable housing development fee ordinance was updated in 2014. The ordinance establishes the Borough of Watchung affordable housing trust fund for which this spending plan is prepared.

## REVENUES FOR CERTIFICATION PERIOD

As of December 31, 2024, the Borough of Watchung has collected **\$3,853,879** in development fees and interest, expended **\$2,153,198**, resulting in a balance of **\$1,700,681**. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of fourth round substantive certification, the Borough of Watchung considered the following:

- (a) Development fees:
  - 1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
  - 2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
  - 3. Future development that is likely to occur based on historical rates of development.
- (b) Payment in lieu: No payments in lieu are projected at this time.

- (c) Other funding sources: None collected or projected.
- (d) Projected interest: Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

SOURCE OF FUNDS											
	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	Total
Residential Development Fees	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	
Non-Residential Development Fees	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	
<i>Total Development Fees</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$160,000</i>	<i>\$1,600,000</i>
Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Funds	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interest	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$130,000
<b>Total</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$173,000</b>	<b>\$1,730,000</b>

The Borough of Watchung projects a maximum of **\$1,730,000** in revenue, to the extent available and depending on the extent of development fees to be collected between January 1, 2025 and December 31, 2034. This amount plus projected interest of **\$130,000** totals **\$1,730,000** in anticipated revenue. This projected revenue, when added to the Borough of Watchung’s trust fund balance of **\$1,700,681** as of December 31, 2024, results in anticipated total revenue of **\$3,430,681** available to fund and administer its affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

**ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough:

- (a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with the Borough’s development fee ordinance in accordance with the Department’s rules and P.L.2008,

c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by the Department on September 10, 1997 and adopted by the Borough of Watchung on October 9, 1997 with the most recent amendment in 2014

(b) Distribution of development fee revenues:

The expenditure of all funds shall conform to the spending plan as approved. The Borough of Watchung Administrator recommends to the governing body the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution. The release of funds requires the adoption of the governing body resolution in accordance with the approved spending plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

Funds deposited in the Housing Trust Fund may be used for any approved activity to address Watchung's fair share obligation and may be set up as a grant or revolving loan program. Such activities may include, but are not limited to:

- Preservation or purchase of housing for the purpose of maintaining or implementing affordability controls;
- Rehabilitation;
- New construction of affordable housing units and related costs;
- Accessory apartment, market to affordable, or regional housing partnership programs;
- Conversion of existing non-residential buildings to create new affordable units;
- Purchase of land for affordable housing;
- Improvement of land to be used for affordable housing;
- Extensions or improvements of roads and infrastructure to affordable housing sites;
- Financial assistance designed to increase affordability;
- Administration necessary for implementation of the Housing Element and Fair Share Plan;
- Any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the Approved Spending Plan.

Funds shall not be expended to reimburse the Borough for past housing activities.

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## DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

### (a) Rehabilitation and new construction programs and projects

#### **Rehabilitation Program: \$875,000**

The Borough has a fourth round Present Need obligation of 35 units. As part of this Spending Plan, the Borough is committing up to **\$875,000** for the rehabilitation of up to thirty five (35) units (at up to \$25,000 per unit). The units will be rehabilitated in accordance with the Watchung Borough Rehabilitation Program, in accordance with the Department requirements. The Borough has an ongoing affordable housing rehabilitation program, administered by its Administrative Agent Community Grants Planning & Housing (CGP&H) which is administered in accordance with the *Borough of Watchung Housing Rehabilitation Program Policies and Procedures Operating Manual*.

#### **Accessory Apartments: \$300,000**

The Borough of Watchung plans to fund 10 accessory moderate-income affordable apartments at \$30,000 per unit, for a total of **\$300,000** to be expended from the trust fund. Additional funding may be provided in accordance with the *Borough of Watchung Affordability Assistance Program Policies and Procedures Manual* to designate these units affordable for low-income households by providing a one-time payment subsidy to render the moderate-income accessory apartments affordable to low-income households.

The Borough has an adopted accessory apartment zoning requirement, which permits affordable accessory apartments. The Borough has contracted with CG&PH, as their Administrative Agent to manage the program in accordance with the *Watchung Borough Accessory Apartment Program Policies and Procedures Manual*.

#### **Extension of Expiring Controls: \$700,000**

There are forty (40) low- and moderate-income, affordable housing apartment units located in the Crystal Ridge at Watchung residential apartment complex located on the property identified as Block 56.01, Lot 2.01, in the Borough of Watchung, located at One Crystal Ridge Drive (the "Property"). The affordable housing controls and restrictive covenants were included in a Deed Restriction, dated August 14, 2006, by and between

MGD Holdings Watch, LLC (c/o Ginsburg Properties, Inc., and the New Jersey Housing & Mortgage Finance Agency (Administrative Agent), and the Borough of Watchung, recorded with the Somerset County Clerk's office on August 22, 2006, in Deed Book 5932, at Page 616, Instrument No. 2006055212 (the "Deed Restriction"). The Deed Restriction identified 40 units to be subject to affordable rental regulations to low- or moderate-income households. The Deed Restriction provides that the control period for the affordable housing units are to be "determined separately for each dwelling unit, commencing on April 29, 2002, the date on which the first certified household occupied the unit," and shall run for a period of at least 30 years. The Certificates of Occupancy for was issued for all buildings containing the affordable housing units on November 20, 2003. The Deed Restriction for each individual unit is set to expire on April 29, 2032, or November 20, 2033 (depending on the interpretation of the Deed Restriction), both dates being within the 4th Round of affordable housing compliance. Pursuant to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), the Borough intends to extend the affordable housing controls, restrictions and covenants in the Deed Restriction for an additional thirty (30) years (resulting in a total of 60 years), specifically N.J.A.C. 5:80-26.12(f) (previously N.J.A.C. 5:80-26.11). Pursuant to N.J.A.C. 5:80-26.12(f)(4)(ii), the Borough will authorize the use of funds from the Borough's Affordable Housing Trust Fund to pay for the extension of the controls. The funds will be paid to the owner of the Property upon receipt of a fully-executed affordable housing deed restriction in compliance with UHAC and the Borough's Affordable Housing Ordinance, along with any other documentation needed for the Borough to receive affordable housing credits for the extension of these units. This Spending Plan proposes a payment of up to **\$700,000** (40 units at \$17,500 per unit).

**(b) Affordability Assistance**

Municipalities are required to spend a minimum of 30 percent of development fee revenue to render existing affordable units more affordable and one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30 percent of the regional median income). Utilizing the formulae the Borough has projected the minimum affordability assistance requirements.

To initially project a funding amount that will be dedicated to affordability assistance, we first subtracted actual expenditures on all new construction, previously funded regional contribution agreements and rehabilitation activities from inception of the fund from the sum of actual and projected development fees and interest through December 31,

2034. This amount was multiplied by 30 percent. The outcome of this calculation is the total remaining funds that must be dedicated to affordability assistance for the period through December 31, 2034.

To initially project a funding amount that will be dedicated to affordability assistance for very low-income households, we divided the affordability assistance figure derived from the above paragraph by three. The outcome of this calculation is the total remaining funds that must be dedicated to very low-income affordability assistance for the period through December 31, 2034.

The Borough of Watchung will dedicate a minimum of **\$1,182,831** from the affordable housing trust fund, to the extent available, such ultimately depending on the development fees collected between 2025 and through 2034, to render units more affordable. This would include a minimum of **\$394,277** from the affordable housing trust fund, to the extent available, to render units more affordable to households earning 30 percent or less of median income by region. Affordability assistance mechanisms may include down-payment assistance, rental assistance, and the conversion of low-income units to very-low-income units (including the accessory apartments) and other programs approved by the Department.

<b>AFFORDABILITY ASSISTANCE CALCULATION</b>		
Actual development fees through 12/31/2024		<b>\$3,600,668</b>
Actual interest earned through 12/31/2024	+	<b>\$253,212</b>
Development fees projected 2025-2034	+	<b>\$1,600,000</b>
Interest projected 2025-2034	+	<b>\$130,000</b>
less housing activity expenditures through 12/31/24 - RCA Phillipsburg	-	<b>\$1,098,108</b>
less housing activity expenditures through 12/31/24 - Tom Tom Realty	-	<b>\$268,000</b>
less housing activity expenditures through 12/31/24 – Rehabilitation	-	<b>\$25,000</b>
less housing activity expenditures through 12/31/24 - Special Needs Housing	-	<b>\$250,000</b>
<b>Total</b>	<b>=</b>	<b>\$3,942,771</b>
<b>Total Affordability Assistance Requirement (30 percent requirement of Total above)</b>	<b>x 0.30 =</b>	<b>\$1,182,831</b>
<b>Projected Minimum Very Low-Income Affordability Assistance Requirement 1/1/2025 through 12/31/2034</b>	<b>÷ 3 =</b>	<b>\$394,277</b>

Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The Township may contract with a private or public entity to administer the requirement for affordability assistance.

**(c) Administrative Expenses**

Municipalities are permitted to use affordable housing trust fund revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures.

To initially project a funding amount that will be available for administrative costs, we summed all development fees actually collected since the inception of the account and all actual interest earned since the inception of the account with all projected development fees and interest projected to be collected through December 31, 2034. From this total amount, we subtracted RCA expenditures made or contractually obligated from the inception of the account through December 31, 2034. We multiplied this amount by 20 percent and then subtracted actual administrative expenditures made from the inception of the account through 12/31/24. The outcome of this calculation is the total remaining funds that will be available to defray administrative expenses for the period through December 31, 2034

<b>ADMINISTATIVE EXPENSE CALCULATION</b>		
Actual development fees and interest through 12/31/2024		\$3,853,879
Projected development fees and interest 2025 through 2034	+	\$1,730,000
Payments-in-lieu of construction and other deposits	+	\$0
Less RCA expenditures thru 12/31/2024	-	\$1,098,108
<b>Total</b>	<b>=</b>	<b>\$4,485,771</b>
20% maximum for Administrative Expenses	x 0.20 =	\$897,154
Less administrative expenditures through 12/31/24	-	\$512,090
<b><i>Projected maximum funds avail. for administration (1/1/25 through 12/31/2034)</i></b>	<b>=</b>	<b>\$372,850</b>

The Borough of Watchung projects that **\$372,850** will be available from the affordable housing trust fund to be used for administrative purposes through 2034.

The fee will be utilized for administrative purposes such as salaries and benefits for municipal employees or consultant fees necessary to develop or implement municipal housing programs such as rehabilitation, accessory apartments, new construction including but not limited to group homes, housing elements, affordability assistance and/or affirmative marketing programs, as described in the Fair Share Plan. Administrative funds may be used to income qualify households and monitor implementation. Development fees may be used to defray the costs of staff or consultants that are preparing or implementing a Fair Share Plan.

The Borough of Watchung will expend the remainder of the trust fund budget (after setting aside funds for the rehabilitation program, accessory apartment program and administrative expenses) for affordability assistance.

Below is the Expenditure Schedule for 2025 through 2034.

PROJECT EXPENDITURE SUMMARY											
Program	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	Total
<i>Rehabilitation</i>	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$ 875,000
<i>Accessory Apartments</i>	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$ 300,000
<i>Extension of Expiring Controls</i>	\$700,000	\$0	0	0	0	0	0	0	0	0	\$ 700,000
<b>Total Programs</b>	<b>\$817,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$117,500</b>	<b>\$ 1,875,000</b>
<i>Affordability Assistance</i>	\$118,283	\$118,283	\$118,283	\$118,283	\$118,283	\$118,283	\$118,283	\$118,283	\$118,283	\$118,283	\$ 1,182,831
<i>Administration</i>	\$37,285	\$37,285	\$37,285	\$37,285	\$37,285	\$37,285	\$37,285	\$37,285	\$37,285	\$37,285	\$ 372,850
<b>Total Expenditures</b>	<b>\$97,307</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$273,068</b>	<b>\$ 2,554,920</b>

## EXCESS OR SHORTFALL OF FUNDS

The four mechanisms that require funding under this Spending Plan are the: Rehabilitation, Program, Accessory Apartment Program, Affordability Assistance Program; and Extension of Expiring Controls are anticipated to be fully funded. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to supplement the Affordability Assistance Program.

## SUMMARY

The Borough of Watchung intends to spend affordable housing trust fund revenues consistent with the housing programs outlined in this HEFSP. The Borough of Watchung has a balance of **\$1,700,681** as of December 31, 2024 and anticipates an additional **\$1,730,000** in revenues through 2034 for a total of **\$3,430,681**. The municipality will dedicate any excess funds or remaining balance toward the affordability assistance program. This Spending Plan demonstrates the Borough's commitment to expend these funds with respect to the following:

- Commitment to expend up to **\$250,000** towards hard costs for the housing rehabilitation program;
- Commitment to expend up to **\$300,000** towards hard costs for affordable accessory apartments;
- Commitment to expend up to **700,000** towards for the extension of expiring controls;
- Commitment to expend at least 30% of affordable housing funds on affordability assistance;
- Commitment to expend not more that 20% of development revenues for administrative costs.

<b>SPENDING PLAN SUMMARY</b>		
Balance as of December 31, 2024		\$1,700,681
<b>Projected REVENUE through 2034</b>		
Development fees	+	\$1,600,000
Payments in lieu of construction	+	\$0
Other funds	+	\$0
Interest	+	\$130,000
<b>TOTAL REVENUE</b>	<b>=</b>	<b>\$3,430,681</b>
<b>EXPENDITURES</b>		
<i>Funds used for Rehabilitation</i>	-	\$875,000
<i>Accessory Apartments</i>	-	\$300,000
<i>Extension of Expiring Controls</i>	-	\$700,000
<b>Total Programs</b>		<b>\$1,875,000</b>
<i>Affordability Assistance</i>	-	\$1,182,831
<i>Administration</i>	-	\$372,850
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>=</b>	<b>\$3,430,681</b>

# Appendix 8



**SOMERSET COUNTY**  
**DOCUMENT COVER SHEET**

Steve Peter, County Clerk  
Somerset County, NJ  
2024 Jul 01 02:44 PM  
BK: 7564 PGS: 1301-1358  
Instrument # 2024015998  
Fee: \$13.00 Doc Type: TWP AGTDEED

HON. STEVE PETER  
SOMERSET COUNTY CLERK  
PO BOX 3000  
20 GROVE STREET  
SOMERVILLE, NJ 08876

WWW.CO.SOMERSET.NJ.US

(Official Use Only)

DATE OF DOCUMENT: <b>06/27/2024</b>	TYPE OF DOCUMENT: <b>Developer's Agreement</b>
FIRST PARTY (Grantor, Mortgagor, Seller or Assignor)	SECOND PARTY (Grantee, Mortgagee, Buyer, Assignee)
Borough of Watchung	S/K Morris Township Associates, LLC
ADDITIONAL PARTIES:	

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY	
MUNICIPALITY: <b>Watchung</b>	MAILING ADDRESS OF GRANTEE:
BLOCK: <b>7010</b>	
LOT: <b>9</b>	
CONSIDERATION: <b>\$ 1.00</b>	

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### DEVELOPERS AGREEMENT

This AGREEMENT made on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the "Agreement") between the BOROUGH OF WATCHUNG, a municipal corporation of the State of New Jersey, having its principal offices at 15 Mountain Boulevard, Watchung, New Jersey 07069, hereinafter called the "Borough or Watchung"; and S/K MORRIS TOWNSHIP ASSOCIATES, LLC, a New Jersey limited liability company, having offices at 515 Marin Boulevard, Jersey City, NJ 07302, hereinafter called the "Developer".

WITNESSETH:

WHEREAS, the Developer bifurcated its application seeking preliminary and final major site plan approval, with use and bulk variance relief, for the property identified as Block 7010, Lot 9 (a/k/a Block 70:10) on the Tax Maps of the Borough of Watchung, located at 1375 Plainfield Avenue (the "Property"), for the demolition of an existing office building and construction of twenty four (24) townhouses and flats in four (4) separate buildings, along with related site improvements (collectively, "Improvements"), and received use, density and building height variance relief from the Borough of Watchung Zoning Board of Adjustment (the "Board") on March 31, 2022, which approval was memorialized in the Resolution No. BA 22-R6, adopted by the Board on May 12, 2022 (the "May 2022 Resolution") a copy of which is annexed hereto as **Exhibit A**; and

WHEREAS, subsequently, in connection with the second portion of the bifurcated application, the Developer received preliminary and final major site plan approval, with bulk variance relief and design waivers, from the Board on June 9, 2022, which approval was memorialized in the Resolution No. BA 22-R8 - PHASE 2, adopted by the Board on July 14, 2022 (the "July 2022 Resolution"), a copy of which is annexed hereto as **Exhibit B** (the May 2022 Resolution and July 2022 Resolution are hereinafter collectively referred to as the "Resolution") (both bifurcated approvals are collectively hereinafter referred to as the "Approval"); and

WHEREAS, the Approval was based upon the application on record, including but not limited to the plans and reports (the "Plans") identified and described in the Resolution (the "Application Documents"), along with the testimony presented before the Board at public hearings held on March 10, 2022, March 31, 2022 and June 9, 2022; and

WHEREAS, the Approval was granted subject to the execution of a developer's agreement between the Borough and the Developer and compliance by Developer with other conditions as more fully set forth in the Resolution, as well as compliance of the Developer with the ordinances of the Borough of Watchung and the laws of the State of New Jersey regarding development; and

WHEREAS, the contents of this Agreement apply to the Improvements and other obligations of the Developer.

NOW THEREFORE, in consideration of the payment of the sum of One (\$1:00) Dollar, each to the other in hand paid, at or before the signing of this Agreement, the receipt whereof is hereby acknowledged by each party, and in consideration for the mutual covenants, agreements, conditions, understandings and undertakings hereinafter contained and set forth, the parties hereto hereby agree as follows:

1. APPLICATION OF AGREEMENT. The terms and conditions of this Agreement shall be applicable to the Property, as herein described above, and the Improvements included in the Approval.

2. DEVELOPER BOUND. The Developer and Borough agree to be bound by all representations, commitments, matters of fact and matters of law which constitute the file and record of the Board as contained in and circumscribed by the Resolution, which is made a part of this Agreement by reference hereto as though fully set forth herein, in this matter and Developer will faithfully discharge all of the obligations and commitments thereof.

3. CONSTRUCTION SUBJECT TO ORDINANCE. The Developer shall construct and design the Improvements in accordance with the Resolution and the applicable portions of the Land Use Ordinance of the Borough of Watchung (unless otherwise granted a variance or design waiver by the Resolution), and in accordance with the approved plans. Developer shall perform all work in full compliance and observation of all applicable ordinances of the Borough. The Developer shall be responsible for securing any and all permits required by law including, but not limited to, road opening permits and any and all other permits required by the ordinances of the Borough and to pay the requisite fees called for under the appropriate fee schedules.

4. GUARANTEES: Guarantees shall be provided as required by the Borough Ordinances and NJSA 40:55D-53, *et seq.*

5. PERFORMANCE GUARANTEES: Developer, through their engineer PS&S, has provided, and the Borough has reviewed and agreed to, construction cost estimates for the cost of installation of the Improvements required by the Approval, as well as perimeter landscaping, to assist in calculations as required by NJSA 40:55D-54, such cost shall be used to calculate the applicable guarantees and inspection fees as provided for in NJSA 40:55D-53, the result of which is as follows:

a. A Performance Guarantee in the amount of Seventy-Seven Thousand Three-Hundred and Fifty-Six Dollars and Forty Cents (\$77,356.40) for the installation of the Improvements identified on the Site Plan, to be dedicated to the Borough or other public entity and as permitted by N.J.S.A. 40:55D-53(1)(a) and required perimeter landscaping as provided for in N.J.S.A. 40:55D-53(1)(b) (the "Performance Guarantee"), as a guaranty for the installation of same. The Performance Guarantee may be released by Resolution of the Borough, and in accordance with the terms of Section 53 of the Municipal Land Use Law (the "MLUL"), upon completion of construction, and the posting and acceptance of a maintenance bond(s), as may be required by the Borough. The Performance Guarantee shall be comprised of cash or the following:

(1) A Surety Bond in the amount of Seventy-Thousand Three Hundred and Twenty-Four (\$70,324.00) Dollars as a guaranty for the installation of the public improvements as part of the development project; and

(2) A cash deposit in the amount of Seven-Thousand Thirty-Two Dollars and Forty Cents (\$7,032.40) Dollars, constituting ten (10%) percent of the Performance Guarantee.

b. Inspection Fees in accordance with Paragraph 7 of this Agreement, captioned "Engineering Escrows and Legal Fees", in the amount of Seventy-Six Thousand Six-Hundred and

Eighty-One Dollars and Ninety Cents (\$76,681.90) Dollars, which includes inspection of installation of items subject to the Performance Guarantee and private engineering items required to be installed. These fees may be paid in installments in accordance with N.J.S.A. 40:55D-53.

Approved bonds posted and cash deposits shall be provided within thirty (30) days of the date of receiving all necessary governmental approvals. The cash deposit shall be released proportionately to the bonds (or other posted performance guaranty) by the Borough. Every performance guaranty bond, whether cash or surety, shall be in a form in conformance with the provisions listed in N.J.A.C 5:36-4. The cash portion may be utilized by the Borough upon default of the Developer and failure to cure any defect or breach under this Agreement within thirty (30) days written notice of same. Sureties shall be required to indicate that the guarantee automatically continues if the work is not completed by the stated expiration date. In addition, all taxes, assessments, escrows, and fees for the Property must be paid prior to the release of Performance Guarantee.

The Developer shall provide and file with the Borough Engineer two (2) complete sets of as-built improvement plans and profiles for the Improvements to be dedicated to the Borough or other public entity (if required), one (1) set of translucent prints and one (1) set of black-on-white paper prints, showing actual construction, as approved, prior to release of Performance Guarantees.

All of the above must be in a form acceptable to the Borough Attorney, and in accordance with the estimates accepted by the Borough Engineer and attached hereto as **Exhibit C** and made a part hereof, which describes the Improvements, the completion of which is assured by the Performance Guarantee.

6. **REPLACEMENT BOND.** In the event that any insurance company, financial institution or other entity issuing a Performance Guarantee hereunder shall be subject to a reorganization, rehabilitation, other action whereby a state or federal agency has taken over management of the entity, or, if in the reasonable opinion of the Borough, the circumstances and condition of the entity results in the Borough declaring that it believes that its interests are jeopardized, within thirty (30) days of such written notification, the Developer shall replace the Performance Guarantee(s). If requested by the Developer, the Borough shall adopt a resolution conditionally releasing the jeopardized Performance Guarantee(s) subject to the posting of satisfactory substitute guarantee(s).

In the event any Performance Guarantee shall lapse, be cancelled or withdrawn or otherwise not remain in full force and effect, the Developer, until an approved Replacement Guarantee has been deposited with the Borough, will cease and desist any and all work unless the Improvements covered by the Performance Guarantee under the Board approval and this Agreement have been completed and approved by the Borough Engineer. Notwithstanding the foregoing, Developer may continue to perform any work necessary for safety or emergency reasons.

7. **ENGINEERING ESCROWS AND LEGAL FEES.** The Developer has deposited with the Borough the amount of Seventy-Six Thousand Six-Hundred and Eighty-One Dollars and Ninety Cents (\$76,681.90) as set forth in paragraph 5(b), in accordance with the Borough's written request, representing the first of four installments of the inspection fees, which total shall not exceed 5% of the cost of the private improvements. Said escrow deposit shall be utilized to cover

the reasonable legal costs associated with, and for the review and preparation of this Agreement, and any necessary correspondences with Developer, Developer's professionals, the Borough and or its professional personnel, including, but not limited to, the Borough Engineer; and to cover the costs associated with services to be rendered by the Borough Engineer or his/her authorized representatives or other approving authority in connection with the inspections of the Improvements of the Project, through and including the date of full execution hereof, and Developer's costs and fees going forward from the date of execution. The Borough Attorney and the Borough Engineer will bill the Developer for further services rendered to the Borough at the same hourly rate and in the same manner as it bills the Borough for other Borough matters. Said monies will be held and administered in accordance with Section 53.1 and 53.2 of the MLUL.

If the escrow is paid in installments as provided for by NJSA 40:55D-53 (h) et seq. then before the escrow deposit dips below 10% of the original escrow amount the developer shall provide the next installment as certified by the Borough Chief Financial Officer. Should the Developer fail to post funds for the escrow account sufficient to pay the costs of any invoice for professional services rendered and continue to fail to post the required funds within thirty (30) days after written notice to the Developer of such deficiency by the Borough, the Borough may issue a stop work order halting all work at the Property until such time as the Developer brings the escrow account balance current. Upon completion of the Improvements at the Property, should any monies be left over in the escrow deposit, the unused balance shall be returned to the Developer in accordance with Section 53.2 of the MLUL.

Should the Borough determine that the amount in escrow for the payment of inspection fees as calculated pursuant to NJSA 40:55D-53(h) is insufficient to cover the cost of additional required inspections, the Borough may require the Developer to deposit additional funds in escrow provided the Borough delivers to the Developer a written inspection escrow deposit request, signed by the Borough Engineer, which informs the Developer of the need for additional inspections, detailing the items or undertakings that require inspection, estimates the time required for those inspections and estimates the cost of performing those inspections.

8. UTILITY CONNECTIONS. The Developer is to be solely responsible for all costs associated with the installation of any and all new utility connections to the Property. In addition to the extent that any utility connections for the Property must be terminated, the Developer, in accordance with the Approval, must disconnect and abandon all such existing utilities to be disconnected in accordance with applicable regulations and connect the new buildings to public utilities as shown on the approved plans.

9. ELECTRONIC VEHICLES CHARGING STATIONS. Subject to and in accordance with the approved Site Plan and Resolution, Developer shall install a conduit for laying of wiring for the electronic vehicle charging stations in compliance with P.L. 2021-C-171, the model ordinance adopted and published by the New Jersey Department of Community Affairs authorized thereunder, and all applicable Borough Ordinances adopted by the Borough.

10. OFF-TRACT IMPROVEMENTS. All off-tract utility work contemplated by the Resolution and Approval, and all improvements to be made in any streets will be as required by the Plans and shall be the obligation of the Developer. Any damage done to municipal or county roadways by the Developer shall be repaired at the Developer's expense.

11. **SANITARY SEWER.** Developer shall construct, operate and maintain all sanitary sewer connections and facilities on the Property in accordance with the Approval and any other applicable approvals, and in compliance with any and all local, County and State laws, regulations, and ordinances, including, without limitation, regulations of the New Jersey Department of Environmental Protection ("NJDEP").

12. **CONDOMINIUM OR HOMEOWNERS ASSOCIATION.** In the event that Developer elects to create a condominium form of ownership or a homeowners association, the Developer shall form a condominium or homeowner's association to be responsible for the maintenance of the common improvements, including, without limitation; the stormwater management system, the on-site sanitary sewer treatment facility, the guest parking spaces, and the electronic-vehicle charging stations, as required pursuant to the Approval. If applicable, the condominium or homeowner's association documents shall be subject to review and approval by the Borough Attorney and Borough Engineer. In the event Developer chooses to develop the Property as a rental development, Developer or the future owner of the Property shall retain maintenance responsibilities as set forth herein. The form of ownership of the Property shall not be regulated by this Agreement.

13. **PHASING OF DEVELOPMENT.** Developer shall comply with the applicable affordable housing phasing schedule for producing the affordable units, including, without limitation, all UHAC Regulations.

14. **ACCEPTANCE OF PUBLIC IMPROVEMENTS.** The Developer shall notify the Borough upon completion of the public improvements, if any, as provided for in MLUL 40:55D-53, et seq., and the Borough Engineer shall provide a report and the governing body shall vote on acceptance of all, part, or none of the improvements as provided for in that section. It is specifically acknowledged and agreed that the on-site sanitary sewer facilities set forth in the Approval shall not be considered a public improvement and not to be dedicated or otherwise transferred to the Borough.

15. **RELEASE OF BOND AND MAINTENANCE GUARANTEES.** After the completion of all required on-site and off-site improvements, if any, and the posting of applicable Maintenance Guarantees, the acceptance of public improvements, and approval of applicable private improvements the Borough shall release the bond(s) posted by Developer. At the Developer's option, the cash portion of the Performance Guarantee may be held as a Maintenance Guarantee or, Developer may post a suitable maintenance bond in accordance with the Municipal Land Use Law, whereupon the cash deposit shall be returned to Developer.

Developer shall post Maintenance Guarantees with the Borough, in accordance with Section 53 of the MLUL, appropriately secured in form and amount satisfactory to the Borough Attorney, conditioned on the Developer maintaining all improvements covered by the Maintenance Guarantees, as set forth in the Resolution, for a period of two (2) years therefrom. Upon posting and acceptance of said Maintenance Guarantee, the Performance Guarantee shall be released by the Borough. The Maintenance Guarantee, as required by law, shall be posted to cover all items dedicated to the public and included in the Performance Guarantee, including perimeter buffer landscaping, and shall be for a period of two years from the date of acceptance of the items by the governing body. In addition, a Maintenance Guarantee shall cover 15% of the cost of installation of private site improvements limited to stormwater management basins, in-flow and

water quality structures within the basin, and the outflow pipes and structures of the stormwater management systems, if any.

16. **BOROUGH STREETS.** The Developer agrees to keep any Borough streets used by vehicles or equipment of the Developer, or its agents, clean from any construction debris or materials and they also agree to use reasonable efforts to install approved material to prevent dust from blowing onto other properties in the Borough during excavation and construction. Should the Developer fail or neglect to perform any item as stated in this Paragraph, upon seventy-two (72) hours written notice from the Borough Engineer, Construction Official or Police Department informing Developer of failure to do so, and then Developer further neglects to so perform, the Borough may perform such work and Developer agrees to reimburse the Borough for same. This Paragraph is not intended to relieve the Developer of duties or obligations under any existing municipal ordinance or approval but rather is intended to provide an additional remedy to the Borough and to permit the Borough to recover the costs of such compliance. If the Developer shall permit dirt, dust, debris, mud, rock, brush, branches, trees, construction materials or similar material to accumulate or remain upon any Borough street for an unreasonable amount of time, in addition to being responsible for cleanup, it shall remain subject to action in the Municipal Court for violation of appropriate Borough ordinances.

17. **BATHROOMS.** The Developer shall provide access to bathrooms for the use of all persons employed in the construction of all of the aforesaid Improvements. Developer agrees to provide easily accessible portable toilets. Such toilet facilities shall be installed immediately at the time required, and their use shall be regulated by the Board of Health and shall be terminated upon approval of the Board of Health within seven (7) days of the time work has been fully completed. Said portable toilet facilities shall be located and shall not otherwise interfere with or affect adjoining residential property as determined in the discretion of the Construction Official or Health Officer.

18. **BUILDING PERMITS.** The Developer shall not receive Building permits until the Developer has posted all items set forth in Sections 5, 7, hereof, and the Borough Engineer has certified compliance with all of the other terms and conditions contained herein, set forth in the Resolution, and pursuant to the terms of the Approval, unless a different time is specifically designated for compliance within this Agreement.

19. **FUTURE TRANSFERS.** The Developer is hereby given the right and privilege to transfer its respective interests in this Agreement to any individual, corporation, partnership, or Limited Liability Company who acquires title to the Property ("New Owner") and such transfer shall not be subject to approval by the Borough of Watchung or any municipal agency, any such New Owner shall have the rights and obligations afforded by this Agreement, and the right to transfer their interest(s) subject to the same rights and obligations imposed on the Developer by this Agreement and the terms of the Approval. It is understood and agreed that, as part of any transfer, the grantee by acceptance of a deed to the Property shall be bound by all of the terms and conditions of this Agreement and agrees to assume all obligations hereunder. In the event that the Developer transfers or assigns less than its entire interest, the grantee shall nonetheless be liable to complete and/or comply with the obligations of the Developer herein with the respect to the portion of the Property received. A partial transfer of the Property shall not relieve the Developer or its successors or assigns of its obligations under this Agreement, with the respect to the portion

of the Property retained. In the event Developer sells, transfers, or assigns its full rights under this Agreement, the New Owner shall post a replacement bond and guaranty, and the Borough of Watchung shall promptly release to Developer the Bond being held.

20. COMPLIANCE WITH RESOLUTION CONDITIONS AND APPLICABLE LAWS. It is further understood and agreed between the parties hereto, subject to the terms and provisions of the Resolution, as follows:

- a. Developer shall comply with all terms and conditions of the Resolution.
- b. No satellite dishes are permitted in the development.
- c. Garages developed pursuant to the Approval shall be used for vehicle parking and not primarily as storage areas.
- d. Developer shall comply with the applicable Ordinances of the Borough and all other applicable laws.
- e. Developer agrees to locate any new utilities required by the Approval underground, as directed by any relevant utility companies.
- f. In the event any road excavation or grading operations are required by the Approval, same shall be performed in accordance with the Plans and shall be approved by the Borough Engineer and the Office of the Somerset-Union Soil Conservation District.
- g. Developer shall pay all taxes, fees and required escrow deposits, that may be due and owing prior to the issuance of any building permits.
- h. Developer shall be required to obtain any and all other approvals, licenses and permits required by any other board, agency or entity having jurisdiction over the application or over the Property; including but not limited to Somerset Union Soil Conservation District, New Jersey DOT, and NJDEP. Developer has received a "Letter of no interest" from the Somerset County Planning Board.
- i. All conditions of the Resolution shall be complied with and acted upon by the Developer unless otherwise amended by formal action of the Board.

21. AFFORDABLE HOUSING COMPLIANCE. The Developer shall comply with all applicable affordable housing requirements of the Borough's Ordinances, the Borough's Judgment of Compliance and Repose, and the Uniform Housing Affordability Control ("UHAC") regulations, including but not limited to income distribution (which includes three very-low-income family units), phasing, heating source, accessibility and adaptability, amenities, size of units and bedrooms distribution across income levels. Developer and/or owner of the affordable housing lot shall engage an experienced affordable housing administrative agent responsible for affirmative marketing, tenant income verification and qualification. Such affordable housing professional services agreement with the administrative agent shall be subject to review and approval by the Borough Attorney, Borough Affordable Housing Attorney and/or Borough Planner.

The Developer and/or owner of the affordable housing lot shall submit a draft deed restriction of thirty (30) years in accordance with UHAC, the Borough's Affordable Housing Ordinance, and the Borough's Court-approved Settlement Agreement with Fair Share Housing Center with respect to the affordability control period for the affordable housing units to the Borough Attorney and Affordable Housing Attorney for review and approval prior to recording of same.

22. DRAINAGE AND GRADING. The drainage and grading of the Property shall be constructed substantially in accordance with the Approval and the soil conservation district requirements.

23. COMPLETION OF IMPROVEMENTS. The Improvements to be covered by the Performance Guarantees and the Maintenance Guarantees contemplated in this Agreement and in the Resolution shall be performed and completed in accordance with the Plans within a period of three (3) years from the date of the issuance of the first building permit or site disturbance, or such additional periods of time as may be granted by the Borough in accordance with Section 53 of the MLUL, pursuant to the terms and conditions of the Approval. In the event the Improvements are not completed within that period, the Borough reserves the right to not issue any certificate(s) of occupancy or building permit(s) for the subject property, and the Developer hereby authorizes the Borough to utilize so much of the Performance Guarantee deposited herewith to complete all of the Improvements described in Exhibit C in accordance with the applicable ordinances, rules, regulations, standards, and specifications of the Borough. In the event the cost of completing said improvements exceeds the amount deposited herewith, the Developer shall be liable to the Borough for any such excess and its obligations under the within Agreement shall continue in full force and effect until full payment is made. The issuance of a certificate of occupancy by the Borough within the three (3) year period shall not be deemed a waiver for defects ascertained during said period or subsequent thereto.

The parties acknowledge and understand that the development of the market-rate townhouses and the development of the affordable housing units may be undertaken by separate entities; and that the conditions of the Resolution and this Agreement shall be applicable and binding upon all entities responsible for all aspects of the development.

24. ON-SITE SUPERVISION. The Developer shall appoint a job superintendent, whose name, office phone number, mobile phone number, home address and home phone number shall be furnished to the Borough Engineer, Public Works Department, Fire and Rescue Department and Police Department for emergencies of a health or safety nature. The Developer or its job superintendent or designated agent shall respond to any said-emergency within a reasonable period of time twenty-four (24) hours per day, seven (7) days per week.

25. PROJECT MEETING. Prior to the commencement of site work, the Developer shall meet with the Borough Engineer and the Construction Official for a pre-construction conference to discuss the anticipated construction schedule, procedures of construction, and any particular requirements of the Engineer and Construction Official, which shall be subject to the satisfaction and approval of the Borough Engineer and Construction Official.

26. INSPECTION BY BOROUGH. The Borough, its consultants, employees, and agents shall be provided access to the site, and among other items, to observe construction, landscaping for buffer areas and all improvements associated with the Approval. The purpose of such observations shall be limited to providing the Borough with an opportunity to determine that such improvements will be constructed in accordance with the Approval and the Resolution. The Borough or its representatives, consultants, employees or agents shall not supervise, direct or have control over the Developer's work during such observations or as a result thereof, nor shall they have responsibility and/or liability for the means, methods, techniques, sequences or procedures

of construction selected by the Developer for safety precautions and programs incident to the work of either or for any failure of either to comply with applicable laws, rules, regulations, ordinances, code or orders. Borough agrees that its Building Inspector and/or Borough Engineer shall promptly make all of the required inspections necessary under the terms of this Agreement and required under any other Ordinances of the Borough, which inspections shall include inspection of any buildings to be erected and landscape improvements to be made on the said Property. Developer agrees that no person or entity shall occupy any units erected and constructed on the Property until the construction of the Improvements, including that portion of the road, associated with the building to be occupied, are completed except for the placement of the pavement wearing course and a written certificate of occupancy for said building is issued by Borough. Notwithstanding anything to the contrary provided herein, Developer may obtain building permits for any and all buildings and the Borough will inspect same prior to the installation of base course bituminous concrete provided the Borough has adequate access to inspect the building as it is being constructed. Notwithstanding anything herein to the contrary, in the event Developer develops the Property as townhouse units, temporary certificates of occupancy and final certificates of occupancy may be issued for each unit separately.

#### 27. INSURANCE REQUIREMENTS:

a. Commercial General Liability Insurance. During the life of this Agreement the Developer shall procure and maintain Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability \$1,000,000.00 insurance per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following (i) Contractual Liability; (ii) Products and Completed Operation; (iii) Independent Contractors Coverage; (iv) Broad Form General Liability Extensions or equivalent; (v) Deletion of all Explosion, Collapse, and Underground Exclusions.

b. Motor Vehicle Liability Insurance. During the life of this Agreement the Developer shall procure and maintain Motor Vehicle Liability Insurance, including applicable No-Fault coverage, with limits of liability of \$1,000,000.00 per occurrence per accident combined single limit bodily injury and Property Damage of \$1,000,000.00. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

c. Notice of Cancellation. Commercial General Liability Insurance, Motor Vehicle Insurance and Workers Compensation Insurance, as described above, shall provide:

"Thirty (30) days advance written notice of cancellation, non-renewal, and/or reduction to the Borough Administrator, Borough of Watchung, 15 Mountain Boulevard, Watchung, New Jersey 07069. If an insurance notice is sent indicating the lapse-in-coverage or cancellation of coverage and no substitute policies have been provided, all work shall immediately cease until same is rectified to the satisfaction of the Borough Administrator and its attorney."

d. Proof of Insurance Coverage. The Developer shall provide the Borough at the time the Agreement is executed, Certificates of Insurance and/or policies acceptable to the Borough as listed below:

- Two copies of Certificates of Insurance for Commercial General Liability and Workers Compensation.

e. Continuation of Coverage. If any of the above coverages expire during the term of this Agreement, the Developer shall deliver renewal Certificates and/or policies to the Borough at least ten (10) days prior to the expiration of this Contract.

f. Workmen's Compensation. The Developer agrees to obtain Worker's Compensation Insurance with a minimum \$1,000,000.00 insurance coverage.

g. For the purposes of this Insurance Requirements section of the agreement the Developer may designate its sub-contractors to secure and provide the required insurance protections in forms suitable to the Borough however, the Developer shall remain obligated to ensure that such insurance is maintained throughout the term of the agreement, and should its sub-contractors fail to procure or maintain the required insurance Developer shall be required to provide same.

28. **STORMWATER FACILITIES MAINTENANCE.** The Borough shall maintain all stormwater facilities within the public right-of-way. The Developer and/or its successors and assigns, will maintain the stormwater facilities on site, as well as above ground basins, underground detention systems and storm filter systems, and all stormwater facilities as shown on the approved plans. The Developer shall provide an operations and maintenance manual for its stormwater facilities to the Borough Engineer for review. The Developer, its successors, heirs, and assigns, shall be responsible for maintenance and operation of the onsite stormwater facilities in compliance with same. The Borough retains the right to inspect and maintain such facilities but has no obligation to do so. In the event, Developer and/or its successors and assigns fails to maintain such facilities and Borough elects to do so, Developer, its successors and/or assigns agree to reimburse the Borough for any costs incurred should the Borough exercise its right to maintain these facilities in the event the Developer fails to adequately maintain these facilities. The Developer and/or its successors or assigns will be responsible for reimbursement of all costs so incurred by the Borough.

29. **COMPLIANCE.** The Developer, and/or its successors and/or assigns shall be responsible for compliance with all applicable Borough Ordinances and for compliance with the Resolution of approval, including all conditions thereof.

30. **REIMBURSEMENT.** The reimbursement provisions of this Agreement shall reflect reasonable actual costs incurred by the Borough including attorneys' fees and costs.

31. **COMPLIANCE WITH APPLICABLE LAWS (AND ENVIRONMENTAL MATTERS).** The Developer shall comply with all laws and regulations of the State of New Jersey, County of Somerset and Borough of Watchung. **DEVELOPER WAIVES ANY AND ALL CLAIMS AGAINST THE BOROUGH FOR ENVIRONMENTAL HAZARDS, UNLESS SAME ARE CAUSED BY THE BOROUGH, AND AGREES TO BE RESPONSIBLE FOR SAME IN ACCORDANCE WITH ITS OWNERSHIP OF THE PROPERTY. DEVELOPER WILL COMPLY WITH ALL ENVIRONMENTAL LAWS APPLICABLE TO THE PROPERTY.**

32. **DEVELOPER'S DEFAULT.** In the event that the Developer defaults under its obligations as set forth herein, the Borough Engineer shall send written notice to the Developer advising of its failure to comply. If the Developer has neither complied with the notice to correct, nor taken affirmative steps toward correcting such default, within forty-eight (48) hours in the

event of an emergency or within thirty (30) days in the event of any non-emergency issue, following receipt of the written notice (excluding Saturdays and Sundays), the Borough may perform the necessary work to achieve compliance (excluding completion of improvements to the Property that are not subject to the Performance Guarantee), and Developer shall reimburse the Borough for the reasonable costs to perform such work. In the event Developer fails to reimburse the Borough within ten (10) days written notice of such request, Developer authorizes the Borough to deduct from the sums posted to secure performance hereunder the reasonable Court costs and attorneys' fees incurred by Borough as a result of such default. In the event that said Court costs and attorney's fees exceed the amount deposited herewith, the Developer shall be liable to the Borough for any such excess and the Developer's obligations under the within Agreement shall continue in full force and effect until payment is made.

33. **RELEASE OF PLANS.** Subject to issuance of building permits as set forth herein, any payments, posting of bonds or other financial obligation required to be performed by the Developer in this Agreement, unless specifically set forth herein otherwise, shall be done and/or performed prior to the signing of the Plans for release to the Developer.

34. **INDEMNIFICATION AND ATTORNEY'S FEES.** Developer agrees to indemnify and hold harmless the Borough, its officials, officers, agents, servants, representatives, employees and the Borough Engineer, and its officers, employees, agents and servants, from and against any and all claims, liabilities, fees, damages, judgments, penalties, costs or expenses of every kind and nature, including, but not limited to court costs and reasonable attorneys' fees, arising from any act of negligence related to Developer's performance of its obligations pursuant to this Agreement, the failure by Developer to perform such obligations, any action or failure to act by the Developer with respect to the project to which this Agreement is applicable or in connection with any allegation of any of the foregoing. Such indemnification and/or hold harmless obligation shall extend not only to any damages but to reasonable costs and expenses of litigation, including, but not limited to, expenses and fees in connection with the engagement or utilization of any fact or expert witnesses, court costs and reasonable attorney's fees, except where the Borough, or its agents including all professionals hired or employed by the Borough, shall be determined to be at fault, regardless of whether by negligence or willful misconduct. When requested by the Borough, the Developer agrees to aid and/or defend the Borough, its officials, officers, agents, servants, representatives, and employees, in the event any or all of same are named as a defendant or defendants in any action relating to activities or obligations of the Developer arising under this Agreement or in connection with the project to which this Agreement applies. In the event the Borough is involved in any litigation, or other similar action, whether initiated by the Borough or others, which action relates in any way to the terms of this Agreement or the Developer's performance hereunder, the Developer agrees to pay and reimburse the Borough for any and all costs and expenses, including, but not limited to, reasonable attorney's fees, court costs and expert witness fees, except where the Borough, or its agents including all professionals hired or employed by the Borough, shall be determined to be at fault regardless of whether by negligence or willful misconduct. This provision shall not apply to any actions or litigation filed against the Borough where the litigation is attributable to wrongful acts or omissions on the part of itself, its agents, or employees. The within indemnification shall not be binding on a successor owner of the Property as to claims arising out of events occurring prior to the transfer of ownership.

35. RELIANCE OF BOROUGH. The Developer further acknowledges and understands all of the conditions contained in this Agreement and the record of the proceedings in this matter, as incorporated in the Resolution and the Approval, are hereby deemed to be essential to the Borough's decision to enter into this Agreement. A breach of any such conditions, the failure of the Developer to adhere to the terms of any agreement incorporated within the Resolution or this Agreement or any deviation from the board-approved plans, except where same has been agreed to between the parties or is understood in industry practice as a "field change", shall be deemed a material breach of this Agreement.

36. RECORDING OF THIS AGREEMENT. After full execution by the Developer and the Borough, the Borough Attorney shall record this Agreement in the Somerset County Clerk's Office. All recording costs shall be borne by the Developer.

37. SEVERABILITY. If any terms or conditions herein are determined invalid by a court of competent jurisdiction, the remainder shall remain in full force and effect.

38. INTERPRETATION OF LAW. This Agreement shall be interpreted under and governed by the laws of the State of New Jersey.

39. NOTICES. All notices required or permitted under this Agreement shall be in writing by certified mail, return receipt requested, to the addresses set forth herein or as otherwise designated by the parties in writing with a copy to Developer's attorney at:

If to Developer:

Jeremy Kaplan  
S/K Morris Township Associates, L.L.C.  
515 Marin Boulevard  
Jersey City, New Jersey 07302

With a copy to:

David B. Kahan, Esq.  
David B. Kahan, P.C.  
515 Marin Boulevard  
Jersey City, New Jersey 07302

If to Borough of Watchung:

Watchung Borough Clerk  
15 Mountain Boulevard  
Watchung, NJ 07060

With a copy to:

Watchung Borough Administrator  
15 Mountain Boulevard  
Watchung, NJ 07060

40. SUCCESSORS. This Agreement shall inure to the benefit of and shall be binding upon any successors and assigns of the respective parties hereto.

41. INTENTIONALLY OMITTED.

42. NON-RELIANCE. Developer acknowledges that it has not relied upon any cost estimates or opinions furnished by the Borough, including the Borough Engineer or Consulting Engineer(s), if applicable, and the Developer has satisfied itself as to the anticipated construction costs of the Improvements set forth herein prior to the execution of this Agreement.

43. ESTOPPEL. It is understood and agreed that the obligations imposed upon the Developer under this Agreement shall not constitute an estoppel against the Board, the Borough or the Borough Council nor relieve the Developer from complying with all other federal, state, county and local requirements.

44. EXHIBITS. The following exhibits are attached hereto and made a part of this Agreement:

- Exhibit A - Borough Board of Adjustment Resolution BA 22-R6
- Exhibit B - Borough Board of Adjustment Resolution BA 22-R8
- Exhibit C - **Engineer's Opinion Of Probable Construction Costs (Onsite) & Engineer's Opinion Of Probable Bonded Costs**

45. CERTIFICATION. In connection with the sale, financing or lease of the Property by Developer or its successors, the Borough agrees that it shall within a reasonable time of written request from Developer, or its successors, provide a written statement directed to the Developer, prospective purchaser, mortgagee or tenant of the Property as may be requested, a statement of compliance or non-compliance with the terms of this agreement including a summary of any known claims for funds due to the Borough or for indemnity and confirmation that such claims have not been asserted or are not known to exist except as disclosed.

46. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto and no statement, promises or endorsement made by any party hereto, or agent of any party hereto, which is not contained in this written contract or the instruments incorporated herein by reference shall be valid and binding. This Agreement may not be enlarged, modified, or altered except in writing, signed by the parties and endorsed thereon. Nothing herein shall be deemed a waiver of other existing applicable municipal construction requirements or any conditions contained in the Resolution or Approval of the Board.

[Signature Pages to Follow]

**BOROUGH OF WATCHUNG  
RESOLUTION: R15**

**WHEREAS**, S/K Morris Township Associates, LLC ("S/K Morris" or "Developer") received preliminary and final major site plan approval, with variance relief, from the Watchung Borough Zoning Board of Adjustment (the "Board") for the development of a twenty-four (24) townhouses and flats in four (4) separate buildings on the property identified as Block 7010, Lot 9 (a/k/a Block 70.10), located at 1375 Plainfield Avenue (the "Property"), which approval was memorialized by Resolution adopted by the Board on May 12, 2022 (the "Approval"); and

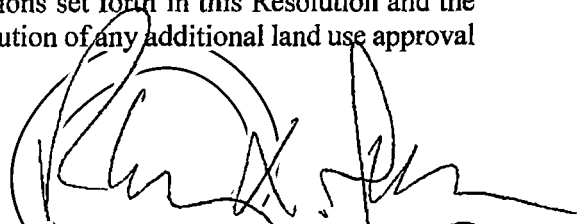
**WHEREAS**, the Approval was granted subject to the Developer entering into a Developer's Agreement with the Borough of Watchung, in addition to Developer's compliance with all other conditions of the Approval; and

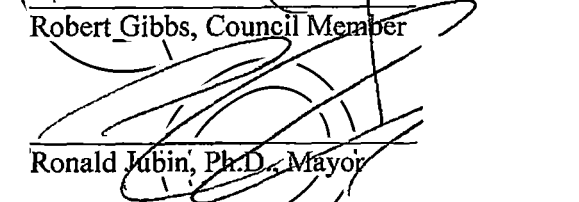
**WHEREAS**, the Borough and Developer negotiated a Developer's Agreement in compliance with the conditions of the Approval; and

**WHEREAS**, the Mayor and Borough Council of the Borough of Watchung find it to be in the best interest of the Borough to enter into and execute the Developer's Agreement with Developer assuring compliance with all terms and conditions of the Approval.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Watchung, in the County of Somerset, State of New Jersey, as follows:

1. The foregoing recitals are incorporated herein as if set forth in full.
2. The Borough is hereby authorized to enter into the Developer's Agreement with the Developer.
3. The Mayor and Borough Clerk are hereby authorized to the Developer's Agreement in substantially the form attached to and made a part of this Resolution.
4. The Borough Clerk, Administrator, Chief Financial Officer and other appropriate official are authorized to take appropriate actions to accomplish the authorizations set forth in this Resolution and the attached Developer's Agreement, including the acceptance and execution of any additional land use approval compliance documentation.
5. This Resolution shall take effect immediately.

  
Robert Gibbs, Council Member

  
Ronald Jabin, Ph.D., Mayor

ADOPTED: JUNE 6, 2024  
 INDEX: ZONING, BOARD OF ADJUSTMENT  
 C: LAND USE CLERK, ZONING OFFICER

**Exhibit A**

**Watchung Borough Zoning Board of Adjustment**

**Resolution of Approval BA 22-R6**

**Dated: May 12, 2022**

UNOFFICIAL COPY

**BOROUGH OF WATCHUNG  
BOARD OF ADJUSTMENT**

**APPLICATION NO. BA 21-05**

S/K Morris Township Associates, LLC  
1375 Plainfield Avenue  
Watchung, New Jersey  
Block 7010, Lot 9

RESOLUTION BA 22-R6

WHEREAS, ~~S/K Morris Township Associates, LLC~~ (the "Applicant") seeks preliminary and final site plan approval, use and bulk variance relief, and site plan exception relief<sup>1</sup>, for the demolition of an existing office building and construction of 27 townhouses in four (4) separate buildings<sup>2</sup> and associated site improvements, located on property designated on the Tax Map of the Borough of Watchung (the "Borough") as Block 7010, Lot 9, more commonly known as 1375 Plainfield Avenue, Watchung (the "Property" or the "Site"); and

WHEREAS, the Applicant seeks the following variance relief:

1. A d(1) use variance for multifamily residential dwelling units, whereas detached single-family dwelling units, rather than multifamily residential dwelling units, are permitted in the Rural ("R-R") Single-Family Residential Zone, pursuant to Section 28-404.A.1 of the Land Development Ordinance (the "Ordinance");
2. A d(5) density variance for a proposed density of 13 dwelling units per acre, whereas the maximum permitted density is 0.726 dwelling units per acre, pursuant to Section 28-404.A.1 of the Ordinance<sup>3</sup>;
3. A d(6) height variance for a building height of 40.7 feet, whereas the maximum permitted height is 35 feet, pursuant to Section 28-404.C of the Ordinance;
4. A variance for a proposed front-yard setback of 12 feet to the Property line fronting on Drift Road, whereas the minimum required front-yard setback is 50 feet, pursuant to Section 28-404(D) of the Ordinance<sup>1</sup>;

<sup>1</sup> The Applicant subsequently modified the proposal to request that the application be bifurcated pursuant to N.J.S.A. 40:55D-76(b). As such, the Applicant sought approval at this time for the requested use, density, and building height variance relief pursuant to N.J.S.A. 40:55D-70(d)(1), (d)(5), and (d)(6), respectively.

<sup>2</sup> The Applicant subsequently stipulated to eliminating three units, thereby reducing the number of units proposed from 27 units to 24 units.

<sup>3</sup> The reduction in the number of units from 27 units to 24 units results in a proposed density of 11.43 dwelling units per acre rather than 13 dwelling units per acre, as initially proposed.

5. A variance for a proposed building coverage of 24%, whereas the maximum permitted building coverage is 15%, pursuant to Section 28-404.D of the Ordinance<sup>1</sup>;
6. A variance for a proposed lot coverage of 65.9%, whereas the maximum permitted lot coverage is 25%, pursuant to Section 28-404.D of the Ordinance<sup>1</sup>;
7. A variance for a proposed net habitable floor area of 669 square feet, whereas the minimum required net habitable floor area is 2,000 square feet, pursuant to Section 28-404.D of the Ordinance<sup>1</sup>;
8. A variance for a proposed building height of 3 stories, whereas the maximum number of stories permitted is 2.5 stories, pursuant to Section 28-404.C of the Ordinance<sup>1</sup>;
9. A design exception for a proposed two-way traffic aisle having a width of 20 feet, whereas two-way traffic aisles shall be a minimum width of 24 feet, pursuant to Section 28-607.B.5 of the Ordinance<sup>1</sup>;
10. A design exception for a proposed access drive setback of 7.05 feet from a side/rear property line, whereas access drives shall be located at least 10 feet from any side or rear property line, pursuant to Section 28-607.B.7 of the Ordinance<sup>1</sup>;
11. A design exception for parking areas located 4 feet from the buildings, whereas off-street parking and traffic aisles shall not be closer than six (6) feet to any building, pursuant to Section 28-607.B.8 of the Ordinance<sup>1</sup>;
12. A design exception for a proposed signage setback of 5 feet, whereas the minimum required signage setback to the lot line is 25 feet, pursuant to Section 28-504 of the Ordinance<sup>14</sup>;
13. A design exception for no proposed buffer, whereas a continuous landscape open space strip of not less than 20 feet in width shall be provided where a lot backs up to any street, pursuant to Section 28-609.F.1 of the Ordinance<sup>1</sup>;
14. A design exception for no proposed street trees along Drift Road, whereas street trees shall be planted along Drift Road, pursuant to Section 28-609.F.4 of the Ordinance<sup>1</sup>;
15. A design exception for the proposed removal of vegetation located within a transition buffer, whereas existing vegetation within a transition buffer shall be preserved and supplemented, pursuant to Section 28-609.E.2.c of the

<sup>4</sup> The Applicant acknowledged that additional exception relief may also be necessary for the proposed size of the sign.

Ordinance<sup>1</sup>; and

16. A design exception for the proposed removal of more than 50% of the existing trees, whereas no more than 50% of the existing trees within the property boundaries shall be removed, pursuant to Section 24-8.c of the Ordinance<sup>1</sup>; and

WHEREAS, public hearings on notice were held on such application on March 10, and March 31, 2022 at which times interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board of Adjustment of the Borough (the "Board"), after carefully considering the evidence presented by the Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Property consists of 91,671 square feet (2.11 acres) of lot area and is located in the northeastern section of the Borough adjacent to the municipal boundary with Berkeley Heights. Specifically, it is located at the southwest corner of the intersection of Plainfield Avenue and Stoney Hill Road (State Highway Route 78 ramp). Land uses surrounding the Site include the St. Mary's Cemetery to the west, dwellings to the north, the Stonegate Townhouses to the east, and Route 78 to the south. The Property is presently improved with a 30,234 square foot, two-story office building and associated site improvements, including parking areas, an access drive from Plainfield Avenue, and a detention basin along the frontage of Plainfield Avenue. The existing building is a non-conforming use in the zone and exceeds the current coverage requirements.
2. The Applicant proposes to demolish the existing office building and to construct 27 townhouses in four (4) separate buildings<sup>5</sup>, along with associated site improvements. The Applicant seeks d(1) use variance relief as multi-family residential dwelling units are not permitted in the R-R Single-Family Zoning District. The Applicant also seeks d(5) density relief for the number of units proposed and d(6) height variance relief for the height of the proposed buildings. The additional required variance and design exception relief is set forth above. The requested bulk variance relief is governed by the provisions of N.J.S.A. 40:55D-70(c).
3. The Applicant submitted the following documents:
  - a. Application for Development, BA 18-12, dated November 11, 2021;
  - b. Preliminary and Final Site Plans prepared by Patricia Ruskan, P.E., dated November 5, 2021, unrevised, same consisting of sixteen (16) sheets;

<sup>5</sup> As amended, the Applicant proposes 24 units.

- c. Steep Slopes Analysis Plan prepared by Patricia Ruskan, P.E., dated November 5, 2021, unrevised, same consisting of one (1) sheet;
  - d. Vehicular and Pedestrian Circulation Plan prepared by Patricia Ruskan, P.E., dated November 5, 2021, unrevised, same consisting of one (1) sheet;
  - e. A Storm Water Management Report dated November 2021, property by Patricia Ruskan, P.E.
  - f. Fire Truck and Circulation Plan prepared by Patricia Ruskan, P.E., dated November 5, 2021, unrevised, same consisting of one (1) sheet;
  - g. Traffic Impact Study prepared by Joseph J. Staigar, P.E., P.P., and Connor G. Hughes, P.E., dated November 19, 2021;
  - h. Architectural Plans prepared by Marc Kushner, R.A., dated November 5, 2021, unrevised, same consisting of thirteen (13) sheets; and
  - i. Technical Memorandum prepared by Andrew Clark, Environmental Scientist, regarding the absence of wetlands, dated June 9, 2021.
4. The Board also received Review Memoranda prepared by the Board Engineer and Planner, David A. Stires, P.E., P.P., dated January 25 and March 29, 2022; a Review Letter from the County of Somerset Planning Board dated December 13, 2021; a Review Letter from the County of Union Department of Economic Development dated November 23, 2021; a Review Letter from the Borough of Watchung Office of Fire Prevention, dated February 2, 2022; and a Review Letter from the Watchung Police Department Chief of Police, Andrew Hart, dated February 4, 2022;
  5. Chairman Cronheim recused himself from hearing the application.
  6. The Board Attorney advised that she had reviewed the notice and associated documents and found same to be sufficient as to content and timeliness, such that the Board had jurisdiction to hear the matter.
  7. David A. Stires, P.E., P.P., C.M.E., the Board Engineer and Planner was duly sworn according to law.
  8. Jason R. Tuvel, Esq., of Prime & Tuvel, entered his appearance on behalf of the Applicant and provided an overview of the Applicant's proposal. He noted that 6 of the 21 proposed dwelling units will be designated as affordable units, resulting in a proposed set aside of 20% for this multifamily inclusionary development.
  9. Mr. Stires provided an overview of the requested checklist waivers and recommended that the Board grant same, which the Board did.

10. Noah Chrismer, having a business address of 515 Marin Boulevard, Jersey City, New Jersey, was duly sworn according to law and testified that he is the Director of Planning and Entitlements for the KRE Group. Mr. Chrismer introduced into evidence, as Exhibit A-1, a PowerPoint presentation consisting of 32 slides. Referencing same, he provided an overview of the Applicant's portfolio of similar projects that the Applicant had been involved in throughout New Jersey.
11. Referencing Sheet 6-A-1, included as part of Exhibit A-1, Mr. Chrismer described the nature and layout of the proposed improvements. He explained that the existing infrastructure would remain, but that the Applicant intends to make significant improvements to the landscaping and stormwater management infrastructure. Mr. Chrismer testified that the project will reduce the amount of impervious coverage currently on the Site. Mr. Chrismer also noted that the existing office building onsite has been vacant for sometime and that marketing efforts to obtain a new tenant have not been fruitful.
12. Patricia Ruskan, P.E., having a business address of 3 Mountain View Road, Warren, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field civil engineering. Referencing Sheet 5 of Exhibit A-1, (an aerial view of the Property taken from Google Earth, Ms. Ruskan provided an overview of the existing and proposed conditions.
13. Referencing Sheet 6 of Exhibit A-1, a colorized rendering of the proposed landscape plan, Ms. Ruskan testified that the Applicant intends to demolish the existing office building and to construct 27 residential units. She further testified that the 27 residential units will be contained within four (4) buildings and provided an overview of how many units will be in each of the buildings.<sup>6</sup> Ms. Ruskan noted that access to the Site is by way of Plainfield Avenue and that the Applicant intends to expand said access. She confirmed that all of the proposed roadways will be private.
14. Ms. Ruskan testified that each of the proposed townhouse units will have individual garages and driveways, while the affordable units will have access to parking spaces adjacent to each building. She explained that the Residential Site Improvement Standards ("RSIS") require a total of 64 parking spaces, and the Applicant proposes 42 garage and driveways spaces and 25 surface spaces, which includes 3 parking spaces that comply with Americans with Disabilities Act ("ADA") requirements in the vicinity of the affordable units. Ms. Ruskan advised that the Applicant stipulated to providing eleven (11) electric vehicle charging stations ("ECVS") which, by law, would reduce the total number of spaces required to 58 spaces.
15. On questioning, the Applicant stipulated to (1) constructing a sidewalk near the building closest to the right-of-way that would lead to a bus stop and (2) working in good faith with the County and Board of Education as to the specific details of the proposed bus stop. Ms. Ruskan testified that gated emergency access from Drift

<sup>6</sup> As amended, the Applicant proposes 24 units.

Road will be provided, and she stipulated, as a condition of approval, that emergency personnel would be given an access key for the gate. She explained that the proposed emergency access would be subject to review by the New Jersey Department of Transportation ("NJDOT"), and she advised that the Applicant had already discussed same with the NJDOT.

16. Ms. Ruskan testified that the townhouse unit residents would store trash and recycling in their garage and the affordable units would be provided with trash and recycling enclosures that would be located adjacent to the affordable units. She confirmed that refuse removal will be done by private contractors. As to the proposed signage, Ms. Ruskan testified that the monument sign to be placed at the entrance of the Site will have a total sign area of 20 square feet, and that same requires variance relief as signs are not permitted in the RR Zone. She confirmed that the sign will not obstruct the sight lines given that it will be located 5 feet from the property line. Ms. Ruskan testified that the proposed Site lighting includes both 16-foot-tall pole-mounted lighting fixtures and building mounted lighting on the front facades. She further testified that only LED lights will be used and confirmed that any exterior lighting will be downward directed or otherwise appropriately shielded so as to eliminate light spillage.
17. Ms. Ruskan described the proposed landscaping and stormwater management system. On questioning as to tree removal, she explained that the trees along the right-of-way will remain, except for two trees that are located in the emergency access area. Ms. Ruskan advised that the Applicant will comply with the tree removal and replacement requirements and stipulated to same as a condition of approval.
18. Referencing Sheet 7 of Exhibit A-1, Grading Plan C-5, Ms. Ruskan testified that a majority of the Site would be disturbed. She explained that, although the lot coverage is being reduced from 71% existing to 64.3% proposed, variance relief is still required because the maximum permitted lot coverage is 25%. Ms. Ruskan confirmed that the grading on the Site can support a stormwater management plan consistent with the Borough's stormwater requirements, as well as the requirements of the New Jersey Department of Environmental Protection ("NJDEP") and the RSIS.
19. Ms. Ruskan testified the Site has existing utility services, but that the sanitary sewer system will be upgraded. She confirmed that the Applicant already has received a will serve letter from Berkeley Heights as to the additional sewer capacity. Ms. Ruskan advised that the Applicant is working with New Jersey American Water to finalize how the development will receive water services. She indicated that an above-ground hot-box may be required on the west side of the entrance road adjacent to Plainfield Avenue depending upon which service option is approved by New Jersey American Water. She further advised that the Applicant already has received a will-serve letter from PSE&G. Ms. Ruskan testified that all of the utilities will be installed underground.

20. Joseph Staigar, P.E., P.P., having a business address of 245 Main Street, Chester, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of traffic engineering. He testified that the trip generation associated with the proposed residential units would be less than the trip generation associated with the prior office use. Mr. Staigar explained that, according to his calculations, the Site would generate 11 trips during the morning peak hours (between 8:00 and 9:00 AM) and 14 trips during the evening peak hours (between 5:00 and 6:00 PM). He further explained that the level of service, (or measurement of how long a vehicle will be delayed) will remain at level 'A', which is the highest (best) level possible. Mr. Staigar opined that the Site will operate safely and efficiently with no blind spots. He explained that the Applicant is not taking credit, by reducing the required number of parking spaces, for all of the EVCS proposed as part of the project. On questioning, Mr. Staigar confirmed that the Site can accommodate emergency vehicles and trash/recycling collection vehicles.
21. On questioning as to the sufficiency of the proposed parking, Mr. Tuvel advised that the Applicant is complying with the RSIS and explained that the Applicant intends to provide sufficient parking to meet resident and visitor parking needs. On questioning as to the lot coverage, Mr. Tuvel reminded the Board that the amount of pavement will be reduced by 40%, and that the total lot coverage will be reduced from 71% existing to 64% proposed.
22. On questioning, Mr. Chrismer testified that although the Applicant did not provide for solar panels as part of the current proposal, the Applicant would stipulate to providing pre-wiring in each building. On question regarding the color and temperature of the proposed LED lighting, the Applicant stipulated, as a condition of approval, to working in good faith with Mr. Stires to select an appropriate color temperature.
23. On questioning as to emergency access, Ms. Ruskan testified that the Applicant has been in contact with the Fire Official about vehicle access onto the Site, and that the Fire Official did not express concerns as to same. The Applicant stipulated, as a condition of approval, to working in good faith with the Fire Official as to the proposed location of the fire hydrant(s). On questioning regarding snow removal, Mr. Tuvel advised that the management company will be responsible for same.
24. On questioning regarding the accuracy of the traffic study given the impact of the Covid-19 pandemic, Mr. Staigar explained that the traffic volume on Plainfield Avenue was based on counts taken in 2017 (pre-Covid) and that he had increased the projected traffic counts to accommodate projected year-over-year growth anticipated during the years after 2017. Mr. Staigar further explained that the level of service is 'A.' He reminded the Board that there is an existing office building that could be functional again in the future, thus creating a greater impact to traffic than the proposed residential project.

25. On questioning as to the sufficiency of the parking space size, Mr. Staigar introduced into evidence, as Exhibit A-2, a Vehicle Circulation Plan. Referencing same, he explained that the driveway parking spaces can accommodate both smaller vehicles with an average length of 16 feet, as well as larger vehicles that are up to 18 feet in length. Mr. Tuvel advised that the Applicant could include a provision in the by-laws that limits where residents can park larger vehicles and, if necessary, limiting the size of vehicles that residents can park on-site.
26. On discussion of stormwater management, an additional trench drain was discussed and the Applicant stipulated, as a condition of approval, to working in good faith with the Board Engineer as to same. The Applicant further stipulated to maintaining the landscaping for a period of two years.
27. Rich Piazza, 27 Hampton Drive, questioned how the proposal would impact current traffic conditions and whether the proposed use would generate more traffic. Mr. Staigar reviewed the findings of his traffic study and he opined that there would not be an increase above what previously existed.
28. John Foster, 87 Hampton Drive, Berkeley Heights, questioned whether the Applicant would seek approval from the County to make left-hand turns exiting onto Plainfield Avenue, to which Mr. Staigar responded the Applicant would seek such approval. Mr. Staigar explained that a 'significant' impact on traffic exists when 100 trips are generated during peak hours, and that the proposal will not result in a significant impact.
29. Chad Miller, 111 Hampton Drive, Berkeley Heights, asked whether the traffic study based considered the difference between the office building and the residential use, and the impact on other streets. Mr. Staigar responded that the traffic study did consider the difference between the office building and residential impacts to traffic, but did not study its effects on surrounding streets.
30. Mark Kushner, R.A., having a business address of 485 Marin Boulevard, Jersey City, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Referencing the architectural plans and exterior renderings that he had prepared, Mr. Kushner described the appearance of the proposed buildings, including the premium materials, gables, and bay windows. He explained that the affordable units are stacked units distributed throughout the buildings. Referencing Sheet 17 of the architectural plans, Mr. Kusher described the two primary brick colors as tan and red, and he explained that vertical and horizontal board-and-baton siding would be used along with metal and asphalt roofing. Additionally, weathervanes will be installed on each building. On questioning, Mr. Kushner testified that the tallest building is Building #3, which has a height of 40'8", and he noted that said building is located approximately 230 feet from Plainfield Avenue.
31. Mr. Kushner testified that all of the exterior lighting would be controlled by the residents of each unit. He explained that the rear of the building have sliding doors

and patios on the ground level, and that the second floor units will have decks. Mr. Kushner confirmed that there will not be any roof mounted equipment.

32. On questioning, Mr. Kushner testified that the Applicant did not consider generators as part of the application, and that the installation of generators would be the homeowners' decision.
33. On questioning by a member of the public as to whether there is an intent to make the project greener, Mr. Kushner responded that the project was a brownfield development; improvements would be made to the existing stormwater management system and infrastructure, and the Site would feature LED lighting and EV charging stations.
34. At the March 31, 2022 hearing, Mr. Tuvel explained that, in response to Board comments and recommendations the Applicant received at the prior hearing, the Applicant modified the proposal. Mr. Tuvel introduced into evidence, as **Exhibit A-3**, a revised Site Plan (Sheet SK-5), dated March 17, 2022, depicting several revisions which include: 1) the installation of a sidewalk and bus stop for consideration by the Board of Education, 2) the increase of the proposed driveway lengths from 18' to 19' in length, 3) the increase of the proposed drive aisle widths from 20' to 22' in width, 4) modifications to the proposed landscape and retaining walls, 5) the inclusion of the trench drain requested by the Board, and 6) modification to the attic spaces of each dwelling unit to include wiring for solar panels.
35. Referencing Exhibit A-3, Mr. Chrismer testified that the areas represented by gray markings indicate the previously proposed improvements, whereas the blue lines depict the proposed revisions. He explained that the Applicant was able to propose a sidewalk extending toward Plainfield Avenue for a future bus stop by shifting Building #1 to the east, thereby providing space for the sidewalk along the west side of Building #1. Mr. Chrismer further explained that the shift of Buildings #1, #2 and #4 allowed the Applicant to increase the driveway lengths to 19' and to increase the cartway widths between the buildings to 22'. He depicted the proposed placement of the trench drain along proposed Road A at the base of Plainfield Avenue. On questioning, Mr. Chrismer advised that the additional surface space was taken from the rear yards between buildings #2 and #3.
36. On questioning regarding the sufficiency of the proposed parking, Mr. Chrismer reiterated that the Applicant is exceeding the requirements set in the RSIS. He explained that the RSIS takes into account the parking needs for both residents and their guests. On questioning as to the impervious coverage calculations, Mr. Tuvel stated that the proposed coverage increased from 64.3% to 65.9% because of the additional 1,500 square feet of surface area, and that the Applicant was modifying the application to request approval for a total coverage not to exceed 66%.
37. Charles Heydt, having a business address of 1 Evertrust Plaza, Suite #901, Jersey City, was duly sworn according to law, provided his qualifications, and was accepted

by the Board as an expert in the field of professional planning. Mr. Hedyt provided an overview of the requested relief, including a d(1) use variance for multi-family housing, which is not a permitted use in the R-R Zone. He explained that the Applicant also requires a d(5) density variance and a d(6) height variance for all of the proposed buildings, with the tallest building height being that of Building #3, the height of which all are in excess of 10% of the 35 foot height requirement.

38. Referencing the photographs included as part of Exhibit A-1, Mr. Heydt described the existing and proposed conditions and the surrounding uses. As to the requested d(1) use variance relief, Mr. Heydt testified that the Medici case established the Site suitability test. Medici v. BPR Co., 107 N.J. 1, 21-22 (1987). He opined that the Property is particularly suitable for the proposed use of a multifamily residential development. Mr. Heydt further opined that a permitted use, such as a single-family dwelling, is not particularly suited given the location of the Property. He explained that the proposed multi-family development would result in a 12:1 density (dwelling units per acre) ratio, and he opined that same would be consistent with the existing land use patterns adjacent to the cemetery.
39. On discussion of the proposed parking and whether sufficient parking is available for residents and visitors, Mr. Heydt reminded the Board that the Applicant is providing 25 surface parking spaces that will be accessible to all that traverse the Property, whereas only 14 visitor parking spaces are required, and that 11 of the parking spaces will be EVCS. Additionally, all of the garage parking spaces will be pre-wired for electric vehicle charging. Overall, Mr. Heydt opined that the proposed parking and on-site circulation will be safe and efficient.
40. As to the proposed landscaping, Mr. Heydt contended that, given the proposed additional plantings, same will provide sufficient screening of the residential buildings. He noted that there will be five (5) Red Maple trees planted along Plainfield Avenue, along with 30 other shade and deciduous trees along the easternly property line, and an additional 43 evergreen trees which will screen vehicle headlights.
41. Referencing Sheet A-1, consisting of an Architectural Rendering, Mr. Heydt testified as to the proofs required for the d(6) height variance relief. He explained that, in an effort to regulate single-family homes on the Site, the zone requirement for building height was 35 feet. He further explained that townhomes within the Borough have been permitted to be three stories. Mr. Heydt testified that the exterior of the townhomes will feature brick and a variety of design elements. He explained that each building will be unique to add variety and help mitigate the impact of the excessive height. On questioning, Mr. Heydt testified that Building #3 will be the highest building, having a height of 40.8". He further testified that the placement of Building #3, which is set back several hundred feet from the nearest adjacent dwelling, serves to mitigate the excessive height as viewed from the right-of-way.
42. As to the d(5) density variance relief, Mr. Heydt explained that the Applicant proposes a density of 12:1. As a means of comparison, he compared the density to

that of the multi-family development located at 708 Mountain Boulevard. Mr. Heydt explained that said multi-family development is located on a Site consisting of four lots owned by three different property owners. Mr. Heydt introduced into evidence, as Exhibit A-4, an analysis comparing the Property's density to that of 708 Mountain Boulevard. He explained that the Mountain Boulevard location is in an area that had both commercial and residential uses and that access to the site was dependent on easements from the three existing dwellings abutting the development. Mr. Heydt explained that the Mountain Boulevard site has a density of 10:1 with one acre having an adjusted density of 9:1. He opined that the proposed density at the Site is consistent with the surrounding uses. In summary, Mr. Heydt concluded that the Site could accommodate both the excessive d(5) density, as well as the excessive d(6) building height.

43. As to the bulk variance relief, Mr. Heydt testified the Applicant is seeking a setback variance for the proposed signage. He explained that the proposed monument sign will be located 12 feet from the property line, whereas the minimum required sign setback is 50 feet. Mr. Heydt explained that there is an additional 30 to 40 feet between the Property line and Drift Road and that the placement of the sign would not impact the sight triangles nor impair safe on-site circulation. He further explained that the additional space between the property line and the right-of-way would result in the residential buildings appearing to be a distance of 40 to 50 feet from the right-of-way. Mr. Heydt opined that the monument sign will facilitate wayfinding without impacting traffic safety.
44. As to the proposed lot coverage, Mr. Heydt noted that the maximum building coverage in the R-R Zone is 15%. He explained that the R-R Zone anticipates a single-family dwelling and explained that townhomes or cluster developments have much greater lot coverages given the required parking and drive aisles. He reminded the Board that the proposal will decrease the existing impervious coverage from 70% to 66% coverage.
45. Mr. Heydt opined that the proposal advances the purposes set forth in Section 2 of the Municipal Land Use Law ("MLUL"). He contended that the purposes contained in subsections (a), (c), (e), and (i) are advanced, as the proposal will promote the general welfare; provide for adequate light, air and open space; establishes an appropriate population density; and creates a desirable visual environment. Mr. Heydt testified that the project will also provide the Borough with the benefit of affordable housing units in excess of the required 20% set-aside, and improvements to the existing stormwater management system. He reminded the Board that the traffic impact of the proposed development is less than the traffic impact associated with the existing office use. Mr. Heydt opined that the EVCS result in a more sustainable proposal.
46. As to the negative criteria, Mr. Heydt opined that there will be no substantial detriment to the general welfare because the number of trips to/from the Site will be reduced; the aesthetics of the Property will be improved; and additional affordable housing opportunities will exist within the Borough. Mr. Heydt further opined that

the proposal will not result in substantial impairment to the Master Plan or Zoning Ordinance. He explained that residential uses are generally lower intensity than office uses and he opined that the proposed development is consistent with the Master Plan. Mr. Heydt testified that the project promotes, rather than impairs, the Master Plan, by providing improved stormwater management measures and additional affordable housing. He further testified that the Site itself does not have steep slopes, flood plains, or wetlands. As such, Mr. Heydt opined the Site is particularly suitable for the proposed development.

47. On questioning, Mr. Tuvel stated that the Applicant stipulated to working with the fire official to obtain his sign off on the proposed development. On questioning as to the maintenance of the improvements, Mr. Tuvel advised that the Applicant stipulated to maintaining all pathways and sidewalks. Mr. Chrismer stipulated that the Developer's Agreement would require maintenance of the Site as a 'Class A' site. On questioning as to the width of the driveway the location of the bus stop, the Applicant stipulated that the drive aisle would flare out to the curb.
48. On questioning as whether the proposed residential units will be for sale or rental, Mr. Chrismer stated the Applicant has not yet decided. He explained that, during the two year period of construction, it will be evident what type of ownership is most appropriate. The Applicant stipulated to complying with the UHAC affordable housing requirements, including, but not limited to, bedroom distribution, phasing of construction, and income restrictions. On questioning, Mr. Stires advised that the Applicant had complied with the applicable parking standards.
49. Members of the public questioned whether a cross-walk between Hampton Drive and Horseshoe Lane would be provided (the County has jurisdiction as to same), and whether Union and Somerset Counties had reviewed the application (yes). Members of the public also questioned whether the proposed parking is sufficient to accommodate residents and visitors (yes), whether trees would be removed and replaced (yes), and the nature of the proposed plantings. In response, the Applicant stipulated to complying with the tree removal and replacement requirements, working in good faith with the Board Planner as to the landscaping plan, and to complying with the landscape maintenance requirements.
50. Phil Linder, 125 Hampton Drive, Berkeley Heights, was duly sworn according to law. He expressed his concerns about the project being very close to his home and the overdevelopment of the area. He testified that he would prefer to see less building coverage and more parking onsite to avoid additional parking on Hampton Drive. Mr. Linder also expressed concern for residents on the Site holding parties with little accommodation for parking. Mr. Linder noted that Hampton Drive and the surrounding area does not have sidewalks. He expressed concern about the safety of neighborhood children and suggested the use of speed bumps, traffic lights, crosswalks and stop signs.
51. John Foster, 87 Hampton Drive, Berkeley Heights, was duly sworn according to law. He testified that he was a police officer for 28 years. He expressed his concern

about the safety of the children in the neighborhood.

52. The Board began deliberations and after the Applicant heard numerous concerns about the density and intensity of the project, the Applicant stipulated, as a condition of approval, to eliminating three dwelling units in order to reduce the proposed density, create more green space, and reduce the overall parking requirement. The Board expressed concern about not having seen a plan depicting the proposal without the removal of the three units, which possibly included the elimination of Building #4, and Board Counsel provided an overview of potential options, including: (1) return to the Board with revised plans; or (2) amend the application to bifurcate the application and seek approval now as to the subsection d(1), d(5), and d(6) use variance relief and the balance of the bulk variance and associated site plan relief on the second phase of the proceedings.

53. On discussion, the Applicant requested that the Board bifurcate the application and, instead of voting on preliminary and final site plan approval and the associated bulk variance relief now, vote only on the subsection d(1), d(5) and d(6) use variance relief at this time. The Applicant advised that the proposal ultimately would be for 24 units, 5 of which will be designated as affordable units, resulting in a proposed density of 11.43 rather than 12.8 dwelling units per acre.

WHEREAS, after reviewing the evidence submitted, the Board, by a vote of 8 to 0, finds that the Applicant has satisfied its burden of proving an entitlement to the requested use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1), (d)(5), and (d)(6), for the following reasons:

**The Positive Criteria:**

1. As to the positive criteria for the d(1) use variance for the proposed multifamily housing development, which is not permitted in the R-R Zone, the Board notes that New Jersey courts recognize three circumstances in which the “special reasons” required for such a variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer “undue hardship” if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).
2. Here, the Board finds that the Applicant has satisfied the positive criteria required for the grant of a d(1) use variance because it has demonstrated that the proposal serves the general welfare and that the Site is particularly suitable for the proposed use. Here, the Board concurs with the unrefuted expert testimony that the proposed development is more appropriate for the Site than a single-family dwelling, particularly given the size and location of the lot. The Board accepts the unrefuted expert testimony of the Applicant’s professionals that the Property can safely and efficiently accommodate the proposed use, particularly since the proposal complies with the Ordinance requirements, as well as the RSIS. Here, the Property is located

adjacent to a cemetery and single-family and multi-family residential developments, including Berkeley Square, which has 37 units, and Stonegate, which has 41 units. The Board recognizes that the proposed use will also provide affordable units in excess of the minimum required set-aside (here, 5 of the proposed 24 units will be designated as affordable). The Board further recognizes that, while a set-aside that exceeds 20% does not render the entire project an inherently beneficial use, the inclusion of affordable units does provide a benefit to the Borough. The Board notes that the proposal will promote sustainability through the inclusion of EVCS, LED lighting, and prewiring each townhouse to accommodate solar panels. As such, the Board concludes that the Applicant has satisfied the positive criteria for subsection d(1) use variance relief.

3. As to the positive criteria for the d(5) density variance, the Board recognizes that the positive criteria for granting variance relief from residential density restrictions require the Applicant to prove that the Site will accommodate the problems associated with a density greater than that permitted by the Zoning Ordinance. See, Grubbs v. Slothower, 389 N.J. Super. 377, 386-391 (App. Div. 2007).
4. Here, the Board finds that the Site can accommodate the problems associated with the proposed density. Initially, the Board notes that the Applicant acknowledged the Board's concerns as to the proposed density and accordingly revised the plans to reduce the total unit count from 27 to 24 units in order to lessen the intensity of the project. The Board finds that the removal of three units allows the Applicant to modify the proposal to provide more than sufficient parking and on-site circulation, while still providing more than a 20% set aside of affordable dwelling units to market rate dwelling units (i.e., 5 of the dwelling units will be designated as affordable units). The Board also recognizes that the provision of green infrastructure will help mitigate the detriment associated with the proposed density.
5. As to the positive criteria for the d(6) height variance, the Board recognizes that zoning boards of adjustment are given exclusive jurisdiction over applications for height variances where the height of a proposed structure exceeds, by either 10 feet, or 10%, the maximum height permitted in the district for a principal structure. N.J.S.A. 40:55D-70(d)(6). The primary purpose of the subject height limit is to provide adequate light, air, and open space and to promote a desirable visual environment, both of which are legitimate purposes of land use regulation. See, N.J.S.A. 40:55D-2(c) and (i). To establish the requisite "special reasons" for a height variance pursuant to subsection d(6), an applicant must demonstrate that the taller than permitted structure would nonetheless be consistent with the surrounding neighborhood and would not offend any of the purposes of the height limitation. In Grasso v. Borough of Spring Lake Heights, 375 N.J. Super. 41, 53 (App. Div. 2004), the appellate court analogized the standard of proof to that required for d(3) conditional use and d(4) FAR variances, thus requiring a showing that the Site will accommodate the problems associated with a greater structure height than that permitted by the applicable zoning ordinance provision.

6. Here, the Board recognizes that tallest of the buildings (Building #3) which exceed the maximum permitted height is set back a considerable distance from any residential properties and the roadway. The Board concurs with the unrefuted expert testimony that the architectural style, layout of the Site, the distance between the right-of-way and the buildings, as well as the existing and proposed landscaping, will sufficiently mitigate the relatively modest visual detriment associated with the excessive height. The Board notes that the location of the Site is adjacent to a cemetery and other multifamily residential developments, such that the proposed height will not be out of character with the neighborhood.

**The Negative Criteria:**

7. As to the negative criteria, the Board recognizes that in d(1) use variance cases the Applicant must demonstrate the negative criteria with “an enhanced quality of proof.” Specifically, in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), the Supreme Court required that an applicant must show:

in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicant’s proofs and the board’s findings must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.

8. Here, the Board finds that the Applicant has demonstrated that it has satisfied its burden of proving the negative criteria. In this regard, the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment to the Master Plan and the applicable provisions of the Land Development Ordinance. The Board further finds that the Applicant has demonstrated the enhanced quality of proof required by Medici.
9. As to the substantial detriment prong of the negative criteria, the Board agrees with the undisputed testimony provided by the Applicant’s professional planner, Mr. Heydt, that the Applicant has demonstrated that the proposed multifamily residential development will not result in substantial detriment to the character of the neighborhood because the proposal will result in less traffic than the existing office use, improve the appearance and functionality of the Site, provide affordable housing in an appropriate location near other multifamily residential developments, reduce the amount of existing lot coverage, and provide green infrastructure including EVCS, LED lighting, and pre-wiring each townhome unit for solar panels. Additionally, given the distance between the proposed improvements and the adjacent properties, the architectural design and features, and the existing and proposed landscaping, any modest aesthetic impacts will be sufficiently mitigated. As such, the Board finds the Applicant has satisfied the substantial detriment prong of the negative criteria.

10. As to the Master Plan and Zoning Ordinance, the Board recognizes that the Township's Master Plan encourages low intensity uses and residential development in the R-R Zone and the Board finds that the proposed development will be consistent with that goal. The Board further recognizes that the population of Watchung is aging faster than the population on average in Somerset County and the entire State, and finds that the provision of multifamily housing, particularly affordable units, will address the needs of the Borough. Finally, the Board finds that the proposal advances the goals and intentions set forth in the 2019 Housing Element and Fair Share Plan to the extent same pertains to the provision of affordable housing in appropriate locations. As such, the Board finds that the Applicant has satisfied the substantial impairment prong of the negative criteria;
11. As to the enhanced quality of proof under Medici, the Board recognizes that while multi-family residential development is not permitted in the R-R Zone, the proposal is more consistent with the applicable zoning than the pre-existing non-conforming office use as testified to by the Applicant's professionals. Here, the proposed use will generate less traffic, reduce the existing impervious coverage, improve the existing infrastructure, and, therefore, the omission of the proposed use as a permitted use in the R-R Zone can be reconciled in accordance with Medici. As such, the Board finds that the Applicant has satisfied the enhanced quality of proof required for the requested subsection d(1) use variance relief.
12. In conclusion, the Board finds that the Applicant has demonstrated an entitlement to the requested subsection d(1) use, d(5) density, and d(6) height variance relief.

WHEREAS, the Board took action on this application at its meeting on March 31, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Watchung, that the application of **S/K Morris Township Associates, LLC**, for variance relief as aforesaid, be, and is, hereby granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
2. The Applicant shall revise the plans to reflect that the Applicant stipulated to eliminating three (3) residential units, thereby reducing the number of units proposed from 27 units to 24 units, 5 of which shall be designated as affordable units;
3. The Applicant shall comply with the comments and recommendations set forth in the January 25, and March 29, 2022 Review Memoranda prepared by the Board

Engineer/Planner, Mr. Stires;

4. The Applicant shall work with the Fire Official to obtain sign off on the proposed plan;
5. The Applicant shall work in good faith with the Fire Official to locate the proposed fire hydrant;
6. The Applicant shall comply with the comments and recommendations set forth in the December 13, 2021 Review Letter prepared by the County of Somerset Planning Board and the November 23, 2021 Review Letter prepared by the County of Union, Department of Economic Development;
7. The Applicant shall revise the application materials to reflect that the Applicant bifurcated the application and sought only the subsection d(1), d(5), and d(6) variance relief;
8. The Applicant shall provide access to the emergency access gate to emergency personnel, or, in the alternative, the Applicant shall install a Knox box;
9. The Applicant shall contract with a third-party as to trash and recycling removal, as well as snow removal;
10. The Applicant shall work in good faith with the Board Engineer as to the proposed color temperature for all lighting. Additionally, all exterior lighting shall be downward directed or appropriately shielded to eliminate unnecessary light spillage;
11. The Applicant shall submit a tree removal and replacement plan and same shall be subject to input, review, and approval of the Shade Tree Commission and the Board Planner;
12. The Applicant shall work in good faith with the Board Engineer and the County to coordinate the location (with input from the Board of Education) of a school bus stop and the Applicant shall construct same and revise the plans accordingly;
13. The Applicant shall pre-wire the buildings for solar panel installation, with ultimate installation costs and approvals to be obtained by future residents should they so desire;
14. The Applicant shall provide eleven (11) EVCS (or as required by law upon submission of a site plan application) in accordance with the State statute N.J.S.A. 40:55D-66.20 and shall prewire all of the garages to accommodate EVCS;
15. The Applicant shall contract with the property management company to provide snow removal for the Site and proof of same shall be submitted to the Borough Engineering Department;
16. The Applicant shall not permit the installation of satellite dishes and same shall be set forth in the lease or sale documentation and, if appropriate, the Developer's Agreement;

17. The Applicant shall work with the Board Engineer to determine a maximum vehicle size for the residents (i.e. no commercial landscaping trucks/box trucks, etc.) and vehicles exceeding such size shall be restricted. The Applicant shall also work with the Board Engineer as to potential locations in which larger vehicles can be parked. Finally, the limitations as to the vehicle sizes and parking locations shall be included in a Developer's Agreement, same to be subject to the review and approval of the Borough Attorney and the Borough Engineering Department;
18. The Applicant shall maintain the Property and all improvements, including the existing and proposed landscaping, sidewalks, and driveways, in a condition appropriate for a Class A development and same shall be provided in the Developer's Agreement, same to be subject to the review and approval of the Borough Attorney and Borough Engineering Department;
19. The exterior of the proposed buildings (including colors, materials, and architectural style) shall be substantially similar to the exteriors depicted on the Plans and testified to by the Applicant. Additionally, all of the site improvements depicted on the plans shall be constructed such that they are substantially similar to same;
20. The Applicant shall comply with all UHAC affordable housing requirements, including, but not limited to, the phasing of construction, income and bedroom distribution, and deed restrictions;
21. If a homeowners association is proposed, the residents of the affordable dwelling units shall be equally represented with the residents of the market rate dwelling units;
22. The Applicant shall upgrade the sanitary sewer system subject to the review and approval of the Borough Engineering Department and shall submit proof that Berkeley Heights has approved of the additional capacity necessary for the development;
23. The Applicant shall locate all utilities underground;
24. The Applicant shall install the trench drain requested by the Board Engineer and depict same on the revised plans;
25. The Applicant shall submit fully engineered site plans as a condition of obtaining the "d" variance relief set forth herein;
26. The Applicant shall secure all required approvals in connection with this proposal, including, but not limited to, approval from the County of Somerset Planning Board, Somerset-Union Soil Conservation District, and Borough of Watchung Fire Official, and same shall be subject to the review and approval of the Borough Building and Engineering Department;
27. The aforementioned approval shall be subject to all State, County, and Borough statutes, ordinances, rules and regulations affecting development in the Borough, County, and State;

28. The Board shall retain jurisdiction over this matter and the Applicant shall be required to return to the Zoning Board of Adjustment for site plan and bulk variance and site plan exception relief prior to obtaining any building permits;

29. Pursuant to N.J.S.A. 40:55D-47(e) and 52(a), and Section 28-702(A) of the Ordinances, any variance relief herein granted by the Board of Adjustment, permitting the construction, alteration, conversion or enlargement of a building or structure, or use of land, shall expire by limitation unless such construction, alteration, conversion or enlargement or said building or structure, or use of land shall have been commenced within one (1) year from the date of adoption of the resolution of approval; and

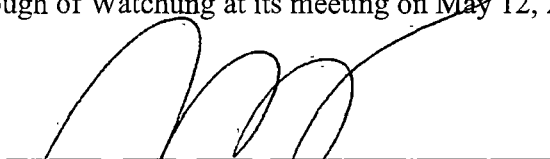
30. Pursuant to Section 28-807(E) of the Ordinances, the Applicant shall submit a completed Compliance Review Package to the Deputy Administrative Officer within ninety (90) days of the Board of Adjustment Resolution of Memorialization. In the event the Applicant does not obtain approval for the Compliance Review Package within one (1) year of the Resolution of Memorialization, then the Applicant shall be required to appear before the appropriate Board and seek an extension of time to obtain approval for the Compliance Review Package.

On Motion duly made and seconded, the Board approved the Resolution:

**Roll Call**

Member	Motion to Grant the Application Date: March 31, 2022						Resolution of Memorialization Date: May 12, 2022					
	Motion	2nd	Aye	Nay	Abstain	Absent	Motion	2nd	Aye	Nay	Ineligible	Absent
Cronheim						X					X	
Hunsinger			X						X			
Brown		X	X					X	X			
Kita			X				X		X			
Fechtner			X									X
Panzarella						X					X	
Taraschi	X		X						X			
Hanlon			X						X			
Steinfeld			X						X			

The undersigned certifies that the foregoing is a true and accurate copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Watchung at its meeting on May 12, 2022.



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THERESA SNYDER, CLERK

UNOFFICIAL COPY

**Exhibit B**

**Watchung Borough Zoning Board of Adjustment**

**Resolution of Approval BA 22-R8 – PHASE 2**

**Dated: July 14, 2022**

**BOROUGH OF WATCHUNG  
BOARD OF ADJUSTMENT**

**APPLICATION NO. BA 21-05**

S/K Morris Township Associates, LLC  
1375 Plainfield Avenue  
Watchung, New Jersey  
Block 7010, Lot 9

**RESOLUTION BA 22-R8 – PHASE 2**

WHEREAS, **S/K Morris Township Associates, LLC** (the “Applicant”) seeks preliminary and final major site plan approval, use and bulk variance relief, and design waiver and exception relief<sup>1</sup>, for the demolition of an existing office building and construction of 27 townhouses in four (4) separate buildings<sup>2</sup> and associated site improvements, located on property designated on the Tax Map of the Borough of Watchung (the “Borough”) as Block 7010, Lot 9, more commonly known as 1375 Plainfield Avenue, Watchung (the “Property” or the “Site”); and

WHEREAS, the Applicant now seeks preliminary and final major site plan approval and the following bulk variance and design waiver and exception relief:

1. A variance for a proposed front-yard setback of 12 feet to the Property line fronting on Drift Road, whereas the minimum required front-yard setback is 50 feet, pursuant to Section 28-404(D) of the Land Development Ordinance (the “Ordinance”);
2. A variance for a proposed building coverage of 20.2%, whereas the maximum permitted building coverage is 15%, pursuant to Section 28-404.D of the Ordinance;
3. A variance for a proposed lot coverage of 63.5%, whereas the maximum permitted lot coverage is 25%, pursuant to Section 28-404.D of the Ordinance;
4. A variance for a proposed net habitable floor area of 669 square feet, whereas the minimum required net habitable floor area is 2,000 square feet, pursuant to Section 28-404.D of the Ordinance;
5. A variance for a proposed building height of 3 stories, whereas the maximum number of stories permitted is 2.5 stories, pursuant to Section 28-

<sup>1</sup> The Applicant previously amended the application and same was bifurcated pursuant to N.J.S.A. 40:55D-76(b). As such, the Applicant previously received approval by Resolution BA 22-R6 dated May 12, 2022 for the requested use, density, and building height variance relief pursuant to N.J.S.A. 40:55D-70(d)(1), (d)(5), and (d)(6), respectively. The Applicant now sought approval for the preliminary and final major site plan approval and associated bulk variance and design waiver and exception relief.

<sup>2</sup> The Applicant subsequently eliminated three units, reducing the number of units proposed from 27 to 24 units.

404.C of the Ordinance;

6. A design exception for a proposed two-way traffic aisle having a width of 22 feet, whereas two-way traffic aisles shall be a minimum width of 24 feet, pursuant to Section 28-607.B.5 of the Ordinance;
7. A design exception for a proposed access drive setback of 7.05 feet from a side/rear property line, whereas access drives shall be located at least 10 feet from any side or rear property line, pursuant to Section 28-607.B.7 of the Ordinance;
8. A variance for distance from accessory building to other buildings of 8.33 ft. where a minimum 20 ft. is required, pursuant to Section 28-404.D of the Ordinance;
9. A design exception for a sign area of 20 square feet for the proposed entrance sign from Plainfield Avenue, whereas identification signs are not permitted for multi-family residential developments, pursuant to Section 28-504.F.2 of the Ordinance;
10. A variance for a proposed signage setback of 5 feet, whereas the minimum required signage setback to the lot line is 25 feet, pursuant to Section 28-504.F.2 of the Ordinance;
11. A design exception for no proposed buffer, whereas a continuous landscape open space strip of not less than 20 feet in width shall be provided where a lot backs up to any street, pursuant to Section 28-609.F.1 of the Ordinance;
12. A design exception for no proposed street trees along Drift Road, whereas street trees shall be planted along Drift Road, pursuant to Section 28-609.F.4 of the Ordinance;
13. A design exception for the proposed removal of vegetation located within a transition buffer, whereas existing vegetation within a transition buffer shall be preserved and supplemented, pursuant to Section 28-609.E.2.c of the Ordinance; and
14. A design exception for the proposed removal of more than 50% of the existing trees, whereas no more than 50% of the existing trees within the property boundaries shall be removed, pursuant to Section 24-8.c of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on June 9, 2022 at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board of Adjustment of the Borough (the "Board"), after carefully considering the evidence presented by the Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Property consists of 91,671 square feet (2.11 acres) of lot area and is located in the northeastern section of the Borough adjacent to the municipal boundary with Berkeley Heights. Specifically, it is located at the southwest corner of the intersection of Plainfield Avenue and Stoney Hill Road (State Highway Route 78 ramp, a/k/a Drift Road). Land uses surrounding the Site include the St. Mary's Cemetery to the west, dwellings to the north, the Stonegate Townhouses to the east, and Route 78 to the south. The Property is presently improved with a 30,234 square foot, two-story office building and associated site improvements, including parking areas, an access drive from Plainfield Avenue, and a detention basin along the frontage of Plainfield Avenue. The existing building is vacant and a non-conforming use in the zone, and also exceeds the current coverage requirements.
2. The Applicant proposes to demolish the existing office building and to construct 24 townhouses in four (4) separate buildings, along with associated site improvements. The Applicant received d(1) use variance relief as multi-family residential dwelling units are not permitted in the R-R Single-Family Zoning District. The Applicant also received d(5) density relief for the number of units proposed and d(6) height variance relief for the height of the proposed buildings. The additional required bulk variance and design waiver/exception relief is set forth above. The requested bulk variance relief is governed by the provisions of N.J.S.A. 40:55D-70(c).
3. The Applicant submitted the following documents:
  - a. Application for Preliminary & Final Site Plan with variance (Application for Development) for BA 21-05;
  - b. Variance Application Checklist;
  - c. Preliminary Major Application Checklist;
  - d. Final Major Application Checklist;
  - e. Resolution BA #84-24 by the Borough Board of Adjustment;
  - f. Resolution BA #85-4 by the Borough Board of Adjustment;
  - g. Proof of taxes and sewer bills through November 15, 2021;
  - h. Land Disturbance Permit Application;
  - i. Tree Removal Application for Permit;
  - j. County of Union November 21, 2021 letter response to application made by

- the Applicant;
- k. County of Somerset December 13, 2021 response to application made by the Applicant.
  - l. Steep Slope Analysis Plan (sht. SS-1) prepared by Patricia A. Ruskan, PE of PS&S, dated November 5, 2021;
  - m. Garbage Truck, Passenger Car & Fire Truck Circulation Plans prepared by Patricia A. Ruskan, PE of PS&S dated May 20, 2021, same consisting of 5 sheets;
  - n. Preliminary, and Final Site Plan for 1375 Plainfield Avenue Watchung Townhouse Redevelopment Plan prepared by Patricia A. Ruskan, PE of PS&S dated May 20, 2021, same consisting of 23 sheets;
  - o. A Technical Memorandum prepared by Andrew Clark of PS&S dated June 9, 2021 and regarding the presence or absence of wetlands impacting the Site;
  - p. Six (6) photographs of the Site on PS&S letterhead;
  - q. Stormwater Management Facilities Maintenance Manual prepared by PS&S dated November 2021;
  - r. ALTA/NSPS Land Title Survey prepared by Jaroslava Vonder, PLS of PS&S for 1375 Plainfield Avenue dated October 25, 2021;
  - s. Stormwater Management Report for KRE Acquisitions Corp., 1375 Plainfield Avenue Watchung Redevelopment Plan prepared by Patricia A. Ruskan, PE of PS&S and dated November 2021 and including an Addendum to same dated May 19, 2022;
  - t. A Traffic Impact Study prepared by Dynamic Traffic prepared November 19, 2021 and revised to May 20, 2022; and
  - u. Architectural Plans for 1375 Plainfield Avenue, Townhouse Redevelopment, Borough of Watchung, Somerset County, NJ prepared by Major Architecture, DPC consisting of 13 plan sheets signed by Marc Kushner, RA and revised to May 19, 2022.
4. The Board also received Review Memoranda prepared by the Board Engineer and Planner, David A. Stires, P.E., P.P., dated January 25 and June 8, 2022; a Review Letter from the County of Somerset Planning Board dated December 13, 2021; a Review Letter from the County of Union Department of Economic Development dated November 23, 2021; Review Letters from the Borough of Watchung Office of Fire Prevention, dated February 2 and June 8, 2022; a Review Letter from the Watchung Police Department Chief of Police, Andrew Hart, dated February 4, 2022;

and a Review Letter from the Watchung Environmental Commission, dated March 4, 2022;

5. Chairman Cronheim recused himself from hearing the application.
6. The Board Attorney advised that he had reviewed the notice and associated documents and found same to be sufficient as to content and timeliness, such that the Board had jurisdiction to hear the matter.
7. David A. Stires, P.E., P.P., C.M.E., the Board Engineer and Planner was duly sworn according to law.
8. Jason R. Tuvel, Esq., of Prime & Tuvel, entered his appearance on behalf of the Applicant in continuation of phase two of the bifurcated application. Mr. Tuvel's opening statement identified the necessary modifications to the application in response to the Board's comments and recommendations upon prior approval of the d variances at a special meeting held on March 31, 2022. In response to Board comments for a reduction in density, the Applicant revised their plans to reduce the unit count from a total of 27 dwelling units to 24 dwelling units. Of the 24 dwelling units proposed, 19 would be market rate allowing for a set aside of 5 affordable units developed as stacked flats. Consequently, the reduction in total units reduced the intensity of other impacts throughout the Site. The overall building coverage was decreased allowing for the inclusion of a community garden and green spaces. The revisions included Building (1) being pulled back from Plainfield Avenue creating a rear yard area for those units. The Applicant would maintain the number of parking spaces; thereby, improving the overall parking counts. Mr. Tuvel would offer four witnesses to present testimony as to the changes made to Phase Two of the application. Although Mr. Joe Staigar would not be presenting testimony, he was available for questioning.
9. Mr. Warner swore in all witnesses and board professionals.
10. Noah Chrismer, having a business address of 515 Marin Boulevard, Jersey City, gave his credentials as the director of planning and entitlements for the KRE Group, and testified as a fact witness. He thanked the Board for their consideration in granting the use variances and allowing them to return with a revised site plan. He recognized that, in response to the Board's comments, the application warranted revision. He opined the revised plans preserved the best parts of the previous plan while implementing all of the Board's suggested improvements. The revised plans allowed the Site to "breathe" by reducing the overall building coverage and impervious coverage. The reduction in density allowed for an increased setback; consequently, reducing the impact of the development on the surrounding areas.
11. Vice Chairman Hunsinger was in agreement with Mr. Warner's suggestion to allow Mr. Chrismer to conclude his fact testimony and for Ms. Ruskan to conclude her expert testimony before proceeding to public questioning of the first two witnesses.

12. Ms. Patricia Ruskan, PE, having a business address of 3 Mountain View Road, Warren, reminded the Board of her qualifications and was accepted as an expert in civil engineering. Ms. Ruskan prepared a 16-sheet compendium of civil plans for the project marked as **Exhibit A-1**, Site and Civil Design. Sheet #4 depicted the project location of the proposed development superimposed on the 2.1-acre area. The left-hand side of Sheet #5 showed the initial plan presented to the Board at the March 10th meeting. The right side of Sheet #5 showed the current plan. Ms. Ruskan testified that the total number of units was reduced from 27 units to 24 units. Building (1) shifted to the south, and the rest of the Site moved with it. The shift in buildings allowed for more open space. Ms. Ruskan showed the shift in Building (1) allowed for a sidewalk on the west side of the building and a rear yard. This change also moved the development further away from Plainfield Avenue. The Applicant would still require a setback variance for 12 ft. because of its location in relation to Drift Road. The footprint of one townhome was removed from each of Building (2) and Building (3). One affordable unit was removed from Building (4). Building (2) and Building (3) were reduced in length allowing for about 2,600 sq. ft. of green space. The green space would have a community garden and a shade structure in the middle with an ADA accessible sidewalk to the shade structure. The southside of the shade structure would be a community lawn area surrounded by landscaping and stepping stones leading to a sensory garden with various herbs and plant identification labels. On the northside of the shade structure there would be several stairs and stepping stones leading to a community garden hosting four raised garden beds for growing vegetables and other plants along with several park benches. Foundation plantings would help buffer the building from the open space. The size of Building (4) was reduced to allow for approximately 800 sq. ft. in lawn area to be surrounded by plantings and to include park benches on the eastern side of Building 4.
13. Ms. Ruskan testified the building coverage decreased from 24% to 20.2%, or by about 3,500 sq. ft. The impervious coverage decreased from 66% to 63.5%, including the expanded motor courts (drive aisle widths) and driveways. Further, there would be no changes to stormwater management as initially proposed. The proposed site plan would generate less runoff, and the bioretention basin would function the same way. The Applicant added a trench drain across the access driveway/road near Plainfield Avenue, which would direct the runoff water back to the bioretention basin.
14. Ms. Ruskan testified that the Applicant would continue to provide 67 parking spaces whereas, 57 spaces were required by RSIS standards. There would be 9 EV charging stations throughout the Site and 3 ADA compliant spaces. Ms. Ruskan reminded the Board that the Applicant was not taking credit for the EV charging stations, which otherwise would reduce the total parking spaces required by 10%. Ms. Ruskan testified the lighting would be the same but shifted along with the building shift. There would be a combination of pole lighting and building mounted lighting, all of which would be LED. The overall landscaping plan would remain as previously proposed, with the addition of the community spaces. The Applicant revised their plans to allow for opportunities for open space and community gathering.

15. Ms. Ruskan continued her testimony using Sheet #7-Blow up of Open Space areas. The sheet portrayed the rear yard behind Building (1), the community garden with the shade structure and the open space areas surrounded by a wide variety of deciduous, evergreen, and ornamental plantings.
16. Mr. Tuvel stated the proposed sign would remain the same size and location as previously proposed. The utility service to the Site would be unchanged. The Applicant would install EV charging stations and ADA compliant spaces throughout the Site. The c-variances and design waivers/exceptions the Applicant was seeking remained the same or improved in terms of their magnitude. Mr. Tuvel also confirmed that the Applicant would work with Mr. Stires' regarding his letter, dated June 8, 2022, to the mutual satisfaction of both parties.
17. Upon questioning by Ms. Fechtner concerning a water source in the community garden, Mr. Chrismer responded the Applicant would provide a hose bib for the use of the residents in the community garden area. Further, Mr. Chrismer affirmed the Applicant's previous stipulation to pre-wire every garage, making them EV ready, in addition to pre-wiring all attic spaces for solar.
18. Mr. Stires, addressing his memo, stated the required d variances were approved in Phase 1 of the application. He raised the issue that the state DEP was amending their stormwater management and added that the amendments may, or may not, be required for this application. Responding to Mr. Stires comments, Ms. Ruskan stated the implementation of the new state stormwater management rules had been delayed; therefore, the Applicant was not able to assess what changes would need to be included in their submission.
19. On questioning by Ms. Fechtner regarding garbage disposal and removal, Mr. Tuvel stated the residents of each home would bring their trash to the curb. Ms. Ruskan added the residents of the townhomes would bring their recycling and garbage cans to the curb for pick up on designated days. The affordable units would be provided with trash enclosures to dispose of their recycling and garbage. The truck would back down the court and work its way forward. The Applicant had previously submitted a plan outlining the maneuverability of the trucks on the Site. Mr. Tuvel stated, according to item #9 under conditions of approval, the Site would contract with a third party for all trash and recycling removal.
20. Mr. Brown expressed concern with respect to the conflict between Union County and Somerset County's control of Plainfield Avenue. Mr. Tuvel responded that the two counties would have to decide which will exercise jurisdiction over the road. Further to Mr. Brown's questions, Mr. Tuvel responded that the Applicant would work with the Board of Education for the placement of the bus stop.
21. The Applicant stipulated to complying with Ms. Fechtner's request to install "Do Not Block Driveway" signs and striping on Plainfield Avenue, so long as the County with jurisdiction will permit these signs and striping.

22. Responding to Mr. Warner's question, Mr. Tuvel stated the Applicant would work with the fire official regarding his memo dated June 8, 2022 to the mutual satisfaction of both parties. Further, Ms. Ruskan reiterated the Applicant would address the accessibility needs of the Site by providing an emergency access gate for emergency use only.
23. The meeting was open to the public. There were no questions from the public for the first two witnesses.
24. Marc Kushner, having a business address of 485 Marin Boulevard, Jersey City, reminded the Board of his qualifications and was accepted as an expert architect. He began his testimony using Sheet #9 of Exhibit A-1 which showed a continuation of the same architectural character of the development, while creating a smaller building footprint to embrace the green spaces for the community. Building (1) was set back an additional 10 ft. allowing for a rear yard. Building (2) has a shorter length but still allows for COAH stacked flats in an expanded 50 ft. deep footprint at the COAH unit location. Both Buildings (1) and (2) would also have a 7 ft. by 9 ft. trash enclosures for the affordable units to utilize. Buildings (3) and (4) were also reduced in length, allowing for the inclusion of green space areas.
25. Mr. Kushner referred to Sheet #10 of Exhibit A-1 which incorporated the same materials and architectural design as the original submission. Dotted lines on buildings (2) and (3) were used to show a 22 ft. shift of the buildings to the right. This shift would provide the open space for a community garden. Sheet #11 showed Building (2) being reduced in size and moved 22 ft. to the right. The architectural design and construction materials would remain the same. Sheet #12 showed the east elevation of Building (2) remained the same, while the west elevation was increased by 10 ft. to accommodate the stacked flats. Sheet #13 showed Building (3) was reduced in length yet retained the same articulation and design. It would be shifted 22 ft. to the right. Sheet # 14 showed the end articulation of Building (3), which would remain the same. Sheet #15 showed a much smaller Building (4), which would provide for 2 units. It also displayed the rear and front elevations and two side elevations. Mr. Kushner, responding to a question, also confirmed that the Applicant would agree to prohibit satellite dishes.
26. Mr. Charles Heydt, having a business address of 1 Evertrust Plaza, Suite #901, Jersey City, reminded the Board of his qualifications and was accepted as an expert professional planner. Mr. Heydt had visited the Site, reviewed the master plan, zoning ordinances and plans submitted. He was present at all the meetings of the application. Mr. Heydt opined that the positive criteria for the variances could be recognized under the flexible c standard where the benefits substantially outweigh the detriments, and that same are subsumed in the previously approved use variance.
27. Mr. Heydt noted the only item that changed was the inclusion of a sunshade structure, an accessory structure of 12 ft. by 14 ft., non-enclosed, located 8.3 ft. from Building (3), whereas the ordinance indicates that an accessory building is to be 20

ft. from an adjacent building. The sunshade structure has no habitable space for occupancy or utilities and may therefore not be considered a structure according to the Ordinance. The Applicant also requested waivers for a drive isle of 22 ft., whereas, 24ft. was required and the distance between an access drive and the side lot line of 7.05 ft., whereas, 10 ft. was required. The waivers were previously presented and continued with the proposed site plan. The setback design waiver for distance between parking and building that was previously requested had been eliminated with the shift of the buildings in the new proposal. He opined the variances related to the use variance and the benefits substantially outweighed the detriments.

28. In addition to meeting the positive criteria, Mr. Heydt recognized that the site plan related to the use variance approval; therefore, it was necessary to once again address the negative criteria, which he did in summary form. There are two prongs to the negative criteria. Concerning prong one, the general welfare, Mr. Heydt opined that the site plan would provide for safe circulation throughout the Site. The fire and safety issues were addressed. The intensity of the Site was reduced, and the plan was consistent with surrounding uses. He opined that the application promoted the general welfare. Concerning prong two, substantial impairment to the zone plan, Mr. Heydt referred to the 1994 Master Plan and the 2019 HEFSP. In 2020, the Master Plan Reexamination Report raised no direct reference to the subject property. The current impervious coverage on the Site would be reduced from 70% to 63.5%. The Applicant would more than meet the requirements for stormwater management by upgrading the existing basin and converting it to a bio-retention basin. The Site would provide housing for future residents. Redeveloping the Site would be an efficient way to address the restrictions of vacant land in the Borough. Mr. Heydt opined the application furthered the purposes of planning.
29. Mr. Tuvel restated that the Applicant's testimony met the intent and purpose of the Municipal Land Use Law (MLUL) and advanced the following zoning ....: 1) the appropriate development of land to promote the general welfare, N.J.S.A. 40:55D-2(a); 2) to provide adequate light, air, and open space, N.J.S.A. 40: 55D-2(c); 3) establish appropriate population densities, N.J.S.A. 40:55D-2(e), and 4) to promote a desirable visual environment, N.J.S.A. 40:55D-2(i). Mr. Tuvel characterized the variance relief being sought as beneficial; thereby, outweighing any detriments. He contended that the application presented no substantial detriment to the surrounding communities and could be reconciled under the Medici standard, as previously testified to during phase 1 of the application approval.
30. On questioning by Ms. Fechtner concerning the rise of the back steps on Building (1), Mr. Kushner responded the proposed steps were a standard rise and to code. They were not exceptionally steep, having a rise of 7 in. and 11 in. tread.
31. On questioning by Mr. Steinfeld as to the benefits the Borough would receive for having this development, Mr. Heydt responded the office building present on the Site was vacant and not being used. The Applicant was proposing a residential use, which was consistent with the surrounding area. Improvements would be made to

the stormwater management improvements, and the Site would provide the Borough with five (5) affordable housing units. Further to Mr. Steinfeld's question of traffic, Mr. Tuvell stated the reduction in the density of the Site resulted in a reduction in the trips generated in the peak am and pm hours.

32. On question of Mr. Hanlon concerning the setback of the sign, Mr. Heydt testified the sign would be setback 5 ft. from the property line or 18 ft. from the curb.

33. As the Ordinance does not allow for accessory structures in the front yard, Mr. Stires raised a concern that a variance should be considered for the inclusion of a hot box should New Jersey American Water deem it necessary for the Site. The Applicants proposed the hot box at a 5 ft. setback. Although the actual size of the structure would be determined by New Jersey American Water, the Applicant was comfortable to request approval for a 5 ft. front-yard setback for an accessory structure. Ms. Ruskan stated the first proposal to New Jersey American Water would be to connect to the main extension. If the Applicant's request was denied, they would need to install the hot box. New Jersey American Water would ultimately decide the location of the hot box. Mr. Heydt stated if a variance would be required for an accessory structure within the front yard, the benefits of complying with the water purveyor's requirement would outweigh the detriments under the statutory requirements for a bulk variance. Mr. Stires added that the variance, if needed, could also be recognized as a hardship variance in meeting regulatory requirements.

34. No member of the public commented on, or objected to, the Applicant's proposal.

WHEREAS, after reviewing the evidence submitted, the Board, by a vote of 6 to 1, finds that the Applicant has satisfied its burden of proving an entitlement to the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (2), and the associated preliminary and final major site plan approval and design waiver and exception relief, for the following reasons:

**The Positive Criteria:**

1. The Board recognizes that an Applicant requesting bulk variance relief under subsection "c" of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria. The positive criteria in bulk variance cases may be established by the Applicant's showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the subsection c(1) standard, an Applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created.
2. The positive criteria for bulk variance relief may also be established by a showing that the granting of an application for variance relief would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL") and the benefits of the granting such relief would substantially outweigh any detriment

associated therewith, in accordance with N.J.S.A. 40:55D-70c(2). Under the subsection c(2) standard, an Applicant must prove that the granting of a proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

3. Here, the Board finds that the Applicant has satisfied the positive criteria for all of the bulk variance relief under the subsection c(2) or flexible "c" variance criteria. The Board accepts the unrefuted expert testimony of the Applicant's professionals that the Property can safely and efficiently accommodate the proposed use, particularly since the proposal complies with the Ordinance requirements, as well as the RSIS. Here, the Property is located adjacent to a cemetery and single-family and multi-family residential developments, including Berkeley Square, which has 37 units, and Stonegate, which has 41 units. The Board recognizes that the proposed use will also provide affordable units in excess of the minimum required set-aside (here, 5 of the proposed 24 units will be designated as affordable). The Board further recognizes that, while a set-aside that exceeds 20% does not render the entire project an inherently beneficial use, the inclusion of affordable units does provide a benefit to the Borough. The Board notes that the proposal will promote sustainability through the inclusion of EVCS, LED lighting, and prewiring each townhouse to accommodate solar panels. Moreover, the Board recognizes that the Applicant's elimination of 3 of the originally proposed 27 units and associated shift of the project away from Plainfield Avenue reduced the magnitude of most of the bulk deviations and otherwise mitigated the detriments associated therewith. As such, the Board concludes that the Applicant has satisfied the positive criteria for subsection c(2) use bulk variance relief.

**The Negative Criteria:**

4. In order to satisfy the negative criteria for "c" variance relief, an Applicant must prove that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The focus of the "substantial detriment" prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the "substantial impairment" prong of the negative criteria is on whether the grant of the variance can be reconciled with the zoning restriction from which the Applicant intends to deviate.
5. Here, the Board finds that the Applicant has demonstrated that it has satisfied its burden of proving the negative criteria. In this regard, the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment to the Master Plan and the applicable provisions of the Land Development Ordinance.

6. As to the substantial detriment prong of the negative criteria, the Board agrees with the undisputed testimony provided by the Applicant's professional planner, Mr. Heydt, that the Applicant has demonstrated that the proposed multifamily residential development will not result in substantial detriment to the character of the neighborhood because the proposal will result in less traffic than the existing office use, improve the appearance and functionality of the Site, provide affordable housing in an appropriate location near other multifamily residential developments, reduce the amount of existing lot coverage, and provide green infrastructure including EVCS, LED lighting, and pre-wiring each townhome unit for solar panels. Additionally, given the distance between the proposed improvements and the adjacent properties, the architectural design and features, and the existing and proposed landscaping, any modest aesthetic impacts will be sufficiently mitigated. As such, the Board finds the Applicant has satisfied the substantial detriment prong of the negative criteria.
7. As to the Master Plan and Zoning Ordinance, the Board recognizes that the Township's Master Plan encourages low intensity uses and residential development in the R-R Zone and the Board finds that the proposed development will be consistent with that goal. The Board further recognizes that the population of Watchung is aging faster than the population on average in Somerset County and the entire State, and finds that the provision of multifamily housing, particularly affordable units, will address the needs of the Borough. Finally, the Board finds that the proposal advances the goals and intentions set forth in the 2019 Housing Element and Fair Share Plan to the extent same pertains to the provision of affordable housing in appropriate locations. As such, the Board finds that the Applicant has satisfied the substantial impairment prong of the negative criteria.
8. The Board finds that the Applicant has demonstrated substantial compliance with the Site Plan requirements set forth in Article 5 of the Land Development Ordinance and good cause exists to grant the Applicant preliminary and final site plan approval, subject to the conditions stipulated to below.
9. As to the requested site plan exceptions for the deficient traffic aisle width and access drive setback, deficient landscape buffer and number of structures, and excessive removal of vegetation and existing trees, the Board has the power, pursuant to N.J.S.A. 40:55D-51 and Section 6-2.4 of the Land Development Ordinance, to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question. The Board accepts the unrefuted testimony of the Applicant's professional planner, Mr. Heydt, and finds that the Applicant's proposal is reasonable, and that strict enforcement of the applicable site plan provisions would be impracticable and would exact undue hardship on the Applicant.

WHEREAS, the Board took action on this application at its meeting on July \_\_\_\_, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Watchung, that the application of **S/K Morris Township Associates, LLC**, for variance relief as aforesaid, be, and is, hereby granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
2. The Applicant shall revise the plans to reflect that the Applicant stipulated to eliminating three (3) residential units, thereby reducing the number of units proposed from 27 units to 24 units, 5 of which shall be designated as affordable units;
3. The Applicant shall comply with the comments and recommendations set forth in the January 25, and June 8, 2022 Review Memoranda prepared by the Board Engineer/Planner, Mr. Stires;
4. The Applicant shall work in good faith with the Fire Official to obtain sign off on the proposed plan;
5. The Applicant shall work in good faith with the Fire Official to locate the proposed fire hydrant;
6. The Applicant shall comply with the comments and recommendations set forth in either the December 13, 2021 Review Letter prepared by the County of Somerset Planning Board or the November 23, 2021 Review Letter prepared by the County of Union, Department of Economic Development, depending upon which County is found to have jurisdiction over Plainfield Avenue;
7. The Applicant shall revise the application materials to reflect that the Applicant bifurcated the application and now sought in Phase 2 only preliminary and final site plan approval and the subsection (c) bulk variance and design waiver/exception relief;
8. The Applicant shall provide access to the emergency access gate to emergency personnel, or, in the alternative, the Applicant shall install a Knox box;
9. The Applicant shall contract with a third-party as to trash and recycling removal, as well as snow removal;

10. The Applicant shall work in good faith with the Board Engineer as to the proposed color temperature for all lighting. Additionally, all exterior lighting shall be downward directed or appropriately shielded to eliminate unnecessary light spillage;
11. The Applicant shall submit a tree removal and replacement plan and same shall be subject to input, review, and approval of the Shade Tree Commission and the Board Planner;
12. The Applicant shall work in good faith with the Board Engineer and the County to coordinate the location (with input from the Board of Education) of a school bus stop and the Applicant shall construct same and revise the plans accordingly;
13. The Applicant shall pre-wire the buildings for solar panel installation, with ultimate installation costs and approvals to be obtained by future residents should they so desire;
14. The Applicant shall provide nine (9) EVCS (or as required by law upon submission of a site plan application) in accordance with the State statute N.J.S.A. 40:55D-66.20 and shall prewire all of the garages to accommodate EVCS;
15. The Applicant shall contract with the property management company to provide snow removal for the Site and proof of same shall be submitted to the Borough Engineering Department;
16. The Applicant shall not permit the installation of satellite dishes and same shall be set forth in the lease or sale documentation and, if appropriate, the Developer's Agreement;
17. The Applicant shall work with the Board Engineer to determine a maximum vehicle size for the residents (i.e. no commercial landscaping trucks/box trucks, etc.) and vehicles exceeding such size shall be restricted. The Applicant shall also work with the Board Engineer as to potential locations in which larger vehicles can be parked. Finally, the limitations as to the vehicle sizes and parking locations shall be included in a Developer's Agreement, same to be subject to the review and approval of the Borough Attorney and the Borough Engineering Department;
18. The Applicant shall maintain the Property and all improvements, including the existing and proposed landscaping, sidewalks, and driveways, in a condition appropriate for a Class A development and same shall be provided in the Developer's Agreement, same to be subject to the review and approval of the Borough Attorney and Borough Engineering Department;
19. The exterior of the proposed buildings (including colors, materials, and architectural style) shall be substantially similar to the exteriors depicted on the Plans and testified to by the Applicant. Additionally, all of the site improvements depicted on the plans shall be constructed such that they are substantially similar to same;

20. The Applicant shall comply with all UHAC affordable housing requirements, including, but not limited to, the phasing of construction, income and bedroom distribution, and deed restrictions;
21. If a homeowners association is proposed, the residents of the affordable dwelling units shall be equally represented with the residents of the market rate dwelling units;
22. The Applicant shall upgrade the sanitary sewer system per the approved plans and shall submit proof that Berkeley Heights has approved of the additional capacity necessary for the development;
23. The Applicant shall locate all on-site utilities underground unless specifically required to be overhead services by the respective utility companies;
24. The Applicant shall install the trench drain requested by the Board Engineer and depict same on the revised plans;
25. The Applicant shall submit fully engineered site plans as a condition of obtaining the "d" variance relief set forth herein;
26. The Applicant shall secure all required approvals in connection with this proposal, including, but not limited to, approval from the County of Somerset Planning Board or the County of Union Department of Economic Development, Somerset-Union Soil Conservation District, and Borough of Watchung Fire Official, and copies provided to the Borough Building and Engineering Department;
27. The trash and recyclables private hauler shall confirm that their vehicles can satisfactorily access the enclosure locations;
28. The plans shall be reviewed by the emergency services that would be servicing this Site. The survey indicates that "no access" is available at the location of the emergency access location. NJDOT permit will be required for the proposed access;
29. A sidewalk has been added with a bus stop area for pick up and drop off for school aged children to and from school. The Applicant shall, in good faith, work out the logistics of busing with the school district;
30. Sanitary sewer is being proposed via a connection to an existing manhole on the east side of Stoney Hill Road. NJDOT permits may be required for the installation of the new pipe and approval and the necessary connection fees will be required from Berkeley Heights and NJDEP;
31. The waterline is proposed to connect to the main in Plainfield Avenue and extends down the driveway into each court where service laterals will connect each unit. There are hydrants proposed at the end of each court, these seem to be in an impractical

location given the limited accessibility of fire apparatus. The Applicant shall consult the Fire Official on this issue;

32. The watermain design is subject to NJAW approval and includes: (1) the possible need for a hot box at the entrance to Plainfield Avenue which is now required to be a raised structure and not subsurface; (2) the Applicant shall confirm with the County that there are no sight line issues with the structure; and (3) the Applicant shall confirm whether the buildings will be sprinklered;
33. Electric and gas "will serve" letters shall be provided;
34. The Applicant shall ensure that the plantings in the detention basin are not going to cause issues regarding clogging of the outlet structure from the plantings in the bottom of the basin;
35. Planting heights shall not obstruct the line of sight as indicated on the plans at the main entrance and court intersections;
36. The Applicant shall install a "Do Not Block Driveway" sign(s) and striping on Plainfield Avenue, subject to the approval by the appropriate authority;
37. If the project proposes a condominium association, the Applicant shall provide to the Borough Attorney and Borough Engineer, for their review and approval, all necessary documentation relative to the proposed homeowners' association;
38. Somerset Union Soil Conservation-District (SUSCD) approval or amended approval is required;
39. The Applicant shall secure Somerset County Planning Board or Union County approval. Somerset, in their December 13, 2021 letter indicates that Plainfield Avenue is maintained by Union County. Union County indicates that the section is not the jurisdiction of Union County (letter dated November 23, 2021). The discrepancy shall be resolved;
40. As the project is on the Route 78 ramp and is proposing utility work and an emergency access to the ramp, the New Jersey Department of Transportation (NJDOT) approval or letter of no interest is required and shall be provided;
41. NJDEP approval along with the necessary approvals from Berkeley Heights (see letter of November 19, 2021 from Alexander Fisher) are required for the sewer connection and modification to flows from the previous office use and shall be provided;
42. The Applicant is to secure all other permits in connection with this proposal including, but not limited to, review and approval by the Borough Building & Engineering Department, post approval compliance and a Developer's Agreement. The Applicant shall provide the necessary bonding and inspection fees as required under the MLUL;

43. The aforementioned approval shall be subject to all State, County, and Borough statutes, ordinances, rules and regulations affecting development in the Borough, County, and State;
44. The Board shall retain jurisdiction over this matter and the Applicant shall be required to return to the Zoning Board of Adjustment for site plan and bulk variance and site plan exception relief prior to obtaining any building permits;
45. Pursuant to N.J.S.A. 40:55D-47(e) and 52(a), and Section 28-702(A) of the Ordinances, any variance relief herein granted by the Board of Adjustment, permitting the construction, alteration, conversion or enlargement of a building or structure, or use of land, shall expire by limitation unless such construction, alteration, conversion or enlargement or said building or structure, or use of land shall have been commenced within two (2) years from the date of adoption of the resolution of approval; and
46. Pursuant to Section 28-807(E) of the Ordinances, the Applicant shall submit a completed Compliance Review Package to the Deputy Administrative Officer within ninety (90) days of the Board of Adjustment Resolution of Memorialization. In the event the Applicant does not obtain approval for the Compliance Review Package within one (1) year of the Resolution of Memorialization, then the Applicant shall be required to appear before the appropriate Board and seek an extension of time to obtain approval for the Compliance Review Package.

On Motion duly made and seconded, the Board approved the Resolution:

**Roll Call**

Member	Motion to Grant the Application Date: June 9, 2022						Resolution of Memorialization Date: July 14, 2022					
	Motion	2nd	Aye	Nay	Abstain	Absent	Motion	2nd	Aye	Nay	Ineligible	Absent
Cronheim						X					X	
Hunsinger			X						X			
Brown	X		X						X			
Fechtner		X	X				X		X			
Panzarella			X									X
Taraschi			X					X	X			
Hanlon			X						X			
Steinfeld				X								X

The undersigned certifies that the foregoing is a true and accurate copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Watchung at its meeting on July 14, 2022.

\_\_\_\_\_  
THERESA SNYDER, CLERK

**Exhibit C**

**Engineer's Opinion Of Probable Construction Costs (Onsite) & Engineer's Opinion Of Probable Bonded Costs**

**Dated: 5/25/2023, last Revised 1/30/2024**

WITNESS:

S/K MORRIS TOWNSHIP ASSOCIATES, L.L.C.  
By: S/K Morris Corp., Managing Member

Jennifer Lewicki  
Name: Jennifer Lewicki  
Title: Executive Assistant

By: [Signature]  
Jeremy Kaplan  
Vice President

Dated: 6/20, 2024

STATE OF NEW JERSEY )

) ss.:

COUNTY OF HUDSON )

Be it remembered, that on this 20<sup>th</sup> day of June, 2024, before the undersigned, personally appeared Jeremy Kaplan, known to me to be the individual who executed the foregoing instrument and, who, being duly sworn to me, did depose and say that he is the Vice President of S/K Morris Corp., the managing member of S/K Morris Township Associates, L.L.C.; that he has the authority to execute same, for the corporation named in, and on whose behalf he executed the within instrument on behalf of the corporation.

Signed and sworn to before me on this 20<sup>th</sup> day of June, 2024.

Lisa Vidal  
Name: Lisa Vidal  
Notary Public of the State of New Jersey  
My Commission Expires: 07/13/2026



IN WITNESS WHEREOF, the Borough and Developer have caused these presents to be signed and attested by their respective corporate officers and their respective seals to be affixed hereto the day and year first above written.

ATTEST:

BOROUGH OF WATCHUNG

[Signature]  
Name: Edith Gil  
Title: Borough Clerk

By: [Signature]  
Name: Ronald Jubin, Ph.D.  
Title: Mayor

Dated: June 27, 2024

STATE OF NEW JERSEY )

) ss.:

COUNTY OF SOMERSET)

I CERTIFY that on JUNE 27, 2024, Edith Gil personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Clerk of the BOROUGH OF WATCHUNG, the municipal corporation named in the attached document;
- (b) this person is the attesting witness to the signing of this document by the proper municipal officer who is Ronald Jubin, Ph.D. , Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) this person knows the proper seal of the municipal corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

[Signature]  
Name: Edith Gil

Signed and sworn to before me on this 27 day of June, 2024.

[Signature]  
Name: Colleen Lange  
Notary Public of the State of New Jersey  
My Commission expires on 10/5/2028

COLLEEN R LANGE  
Notary Public, State of New Jersey  
My Commission Expires  
October 05, 2028

2024015998  
WATCHUNG BORO  
15 MOUNTAIN BLVD C/O EDITH G GIL  
WATCHUNG, NJ 07069

**ZONING BOARD OF ADJUSTMENT  
BOROUGH OF WATCHUNG  
BA 25-R9  
S/K MORRIS TOWNSHIP ASSOCIATES, LLC  
Block: 7010 - Lot: 9  
1375 Plainfield Avenue, Watchung  
Application No. BA 21-05**

**RESOLUTION MEMORIALIZING AN EXTENSION OF THE STATUTORY  
PROTECTION PERIOD APPLICABLE TO PRELIMINARY & FINAL MAJOR SITE  
PLAN APPROVAL**

**WHEREAS**, S/K MORRIS TOWNSHIP ASSOCIATES, LLC (the "Applicant") has applied to the Zoning Board of Adjustment of the Borough of Watchung (the "Board"), for an extension of the time period in which the zoning requirements applicable to the site plan approval granted by the Board and all other rights conferred upon the Applicant pursuant to N.J.S.A. 40:55D-49 are not to be changed (i.e., the "Statutory Protection Period"); and

**WHEREAS**, on June 9, 2022, the Board granted the Applicant's request for preliminary and final major site plan approval and associated bulk variance and design exception relief, in connection with the Applicant's proposal to demolish an existing office building and construct twenty-four (24) townhomes across four (4) separate freestanding buildings, along with other associated improvements, on property identified on the Official Tax Map of the Borough of Watchung as Lot 9 within Block 7010, more commonly known as 1375 Plainfield Avenue, Watchung (the "Phase 2 Approval"); and

**WHEREAS**, the resolution memorializing the Phase 2 Approval was adopted by the Board on July 14, 2022 and is identified by Resolution No. "BA 22-R8 – Phase 2" (the "Resolution of the Phase 2 Approval"); and

**WHEREAS**, the Phase 2 Approval constituted the second portion of a bifurcated application submitted by the Applicant pursuant to N.J.S.A. 40:55D-76(b), with the Applicant

having obtained use, density, and height variance relief, pursuant to N.J.S.A. 40:55D-70(d) *et seq.*, from the Board prior to obtaining the Phase 2 Approval, with the granting of such relief being memorialized by resolution adopted by the Board on May 12, 2022 (the "Resolution of the Phase 1 Approval"); and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-52(a), the Statutory Protection Period applicable to the Phase 2 Approval would have naturally expired on July 14, 2024 (i.e., two (2) years after the date on which the Resolution of the Phase 2 Approval was adopted); and

**WHEREAS**, the Board granted the Applicant's first request for a one (1) year extension of the Statutory Protection Period applicable to the Phase 2 Approval, and memorialized said extension, on May 9, 2024 (the "Resolution of the First Extension"), and, as such, the Statutory Protection Period applicable to the Phase 2 Approval is set to expire on July 15, 2025; and

**WHEREAS**, by way of letter dated March 25, 2025, the Applicant, through counsel, requested a second one (1)-year extension of the Statutory Protection Period applicable to the Phase 2 Approval, therein requesting additional time to satisfy the conditions set forth in the Resolution of the Phase 2 Approval, meet compliance requirements, and obtain various required outside agency approvals; and

**WHEREAS**, also pursuant to N.J.S.A. 40:55D-52(a), the Board, for good cause, may extend the Statutory Protection Period for extensions of one (1) year but not to exceed three (3) extensions, provided that the developer seeking such an extension has followed the standards prescribed for final approval; and

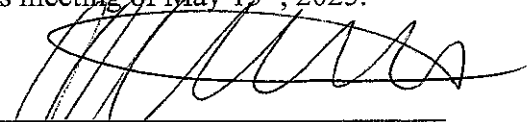
**WHEREAS**, the Board, by a vote of 7 to 0, finds that the Applicant has followed the standards prescribed for final approval and has sufficiently demonstrated good cause to warrant a second one (1)-year extension of the Statutory Protection Period;

**NOW, THEREFORE, BE IT RESOLVED**, by the Zoning Board of Adjustment of the Borough of Watchung, on the 15<sup>th</sup> day of May, 2025, that the request of **S/K MORRIS TOWNSHIP ASSOCIATES, LLC**, for a second one (1)-year extension of the Statutory Protection Period applicable to the Phase 2 Approval, as aforesaid, be and is hereby granted, such that said Statutory Protection Period shall expire, unless further extended, on July 14, 2026, with such extension to be subject to all of the same conditions as are set forth in Resolutions of the Phase 1 Approval, Phase 2 Approval, and First Extension.

ROLL CALL VOTE:

<b>Vote on Motion to Grant Extension Request and Adopt Resolution: May 15, 2025</b>							
<b>MEMBER</b>	<b>Motion</b>	<b>Second</b>	<b>Yes</b>	<b>No</b>	<b>Ineligible</b>	<b>Abstain</b>	<b>Absent</b>
Chairman Cronheim			X				
Vice-Chairman Hunsinger	X		X				
Mr. Terrezza		X	X				
Mr. Sopko			X				
Mr. Panzarella			X				
Mr. Tarashi							X
Mr. Birrell			X				
Mr. Van de Castle – Alt. 1			X				
Mr. Xie – Alt. 2							X

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Watchung at its meeting of May 15<sup>th</sup>, 2025.

  
 \_\_\_\_\_  
 Catherine Furlan, Board Clerk  
 ZONING BOARD OF ADJUSTMENT  
 OF THE BOROUGH OF WATCHUNG,  
 COUNTY OF SOMERSET,  
 STATE OF NEW JERSEY

Dated: May 15<sup>th</sup>, 2025

# Appendix 9

**BOROUGH OF WATCHUNG  
RESOLUTION: R18**

**AUTHORIZING AN AFFORDABLE HOUSING AGREEMENT WITH OUR  
HOUSE, INC., IN CONNETION WITH THE OPERATION OF AN  
AFFORDABLE HOUSING GROUP HOME**

**WHEREAS**, the Borough of Watchung is obligated to provide affordable housing opportunities throughout the Borough; and

**WHEREAS**, the Borough maintains an Affordable Housing Trust Fund to assist with the development of affordable housing developments in the Borough; and

**WHEREAS**, Our House, Inc., is a not-for-profit, charitable organization that operates group homes for individuals with developmental disabilities (“Our House”); and

**WHEREAS**, Our House owns the property identified as Lot 24 in Block 7004, located at 103 High Tor Drive, in the Borough of Watchung (the “Property”); and

**WHEREAS**, Our House intends on operating a six (6) bedroom group home for adults with developmental disabilities on the Property; and

**WHEREAS**, Our House has requested a financial contribution from the Borough to make certain renovations to the Property in exchange for the placement of affordable housing restrictions on the Property to enable the Borough to obtain affordable housing credits therefrom; and

**WHEREAS**, the six (6) bedrooms shall then be rented to very low-income adults, defined by Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as 30% of regional median income, with developmental disabilities, in accordance with New Jersey regulations or as may be otherwise approved by the New Jersey Superior Court; and

**WHEREAS**, in exchange for the requested financial contribution by the Borough, Our House agrees to the placement of an affordable housing deed restriction on the Property pursuant to the terms of the applicable affordable housing regulations or Court Order, and the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, *et seq.*; and

**WHEREAS**, Our House agrees to comply with all of the terms and requirements of COAH or comparable State department or agency, or by a Court of competent jurisdiction, and UHAC regulations in order to qualify all six (6) bedrooms of the Group Home as affordable housing rental units for supportive and special needs housing thereby permitting the Borough to receive credit for said units; and

**WHEREAS**, the Borough and Our House have negotiated and agreed to an Affordable Housing Agreement, which memorializes the terms and conditions of the Borough’s financial contribution towards the affordable housing group home from its Affordable Housing Trust Fund, along with Our House’s obligations in connection with same; and

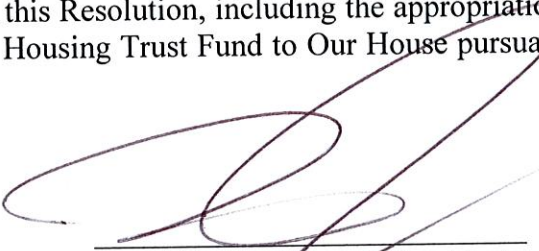
**BOROUGH OF WATCHUNG  
RESOLUTION: R18**

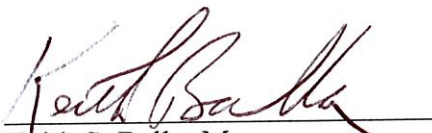
**WHEREAS**, the Mayor and Council of the Borough of Watchung has determined that it is in the best interest of the Borough to authorize and approve the affordable housing agreement with Our House.

**NOW, THEREFORE, BE IT RESOLVED** by Council of the Borough of Watchung, County of Somerset that it hereby authorizes and approves the Affordable Housing Agreement with Our House for the Borough's financial contribution in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars, and Our House's obligation to grant affordable housing deed restriction on the Property and operate the group home in order for the Borough to obtain affordable housing credit for six bedrooms of the group home

**BE IT FURTHER RESOLVED** that the Mayor and Borough Clerk are hereby authorized to sign and execute the Affordable Housing Agreement in substantially the form attached to this Resolution.

**BE IT FURTHER RESOLVED** that all appropriate Borough officials are hereby authorized to effectuate the authorizations in this Resolution, including the appropriation of the \$250,000.00 from the Borough's Affordable Housing Trust Fund to Our House pursuant to the terms of the Affordable Housing Agreement.

  
\_\_\_\_\_  
Ronald Jubin, Council President

  
\_\_\_\_\_  
Keith S. Balla, Mayor

ADOPTED: JULY 14, 2022  
INDEX: AWARDS, FINANCE-MISC,  
C: B. HANCE, T. SNYDER,

## AFFORDABLE HOUSING AGREEMENT

### Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home

This Affordable Housing Agreement (“Agreement”) is made and entered into this 14<sup>th</sup> day of July 2022, by and between the parties hereto:

**OUR HOUSE, INC.**, a 501(c)(3), not-for-profit, charitable corporation organized under the laws of the State of New Jersey, having offices at 76 Floral Avenue, Murray Hill, New Jersey 07974 (hereinafter “Our House”); and

**THE BOROUGH OF WATCHUNG**, a New Jersey municipal corporation in the County of Somerset, with an address at 15 Mountain Boulevard, Watchung, New Jersey 07069 (hereinafter the “Borough”).

#### RECITALS:

**WHEREAS**, Our House owns the property identified as Lot 24 in Block 7004 on the official tax map of the Borough of Watchung, consisting of approximately 1.50± acres, located at 103 High Tor Drive (the “Property”); and

**WHEREAS**, Our House intends on operating a six (6) bedroom group home for adults with developmental disabilities on the Property; and

**WHEREAS**, Our House has requested a financial contribution from the Borough to make certain renovations to the Property in exchange for the placement of affordable housing restrictions on the Property to enable the Borough to obtain affordable housing credits therefrom; and

**WHEREAS**, the group home shall be an approximately 2,086 sq. ft. ranch-style residence, consisting of six (6) bedrooms, three (3) full bathrooms, a kitchen, a living room, a family room, and a staff office room (the “Group Home”); and

**WHEREAS**, the Group Home, by and through the operation of Our House, shall provide residential, vocational, educational, recreational and support services to low income adults with developmental disabilities; and

**WHEREAS**, the Group Home shall not be age-restricted, nor be occupied by individuals under eighteen (18) years of age; and

**WHEREAS**, Our House shall hold and maintain a license to operate the Group Home for the developmentally disabled from the Department of Human Services of the State of New Jersey (“DHS”) Division of Development Disabilities (“DDD”), the Department of Children and Families of the State of New Jersey (“DCF”), or comparable State department or agency; and

## **AFFORDABLE HOUSING AGREEMENT**

### **Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

**WHEREAS**, the six (6) bedrooms shall then be rented to very low-income adults, defined by Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as 30% of regional median income, with developmental disabilities, in accordance with New Jersey regulations or as may be otherwise approved by the New Jersey Superior Court; and

**WHEREAS**, in exchange for the requested financial contribution by the Borough, Our House agrees to the placement of an affordable housing deed restriction on the Property pursuant to the terms of the applicable affordable housing regulations or Court Order, and the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, *et seq.*; and

**WHEREAS**, a copy of the form deed restriction to be placed on the Property prepared by the Borough Attorney pursuant to the terms of this Agreement, following the form of Appendix E-2 of the UHAC regulations, is attached hereto as **Exhibit A** and made a part hereof (the “Deed Restriction”); and

**WHEREAS**, the Group Home shall qualify as “supportive and special needs housing” as defined in New Jersey regulations, and accepted as affordable housing by COAH or comparable State department or agency, or by a Court of competent jurisdiction; and

**WHEREAS**, Our House further agrees to comply with all of the terms and requirements of COAH or comparable State department or agency, or by a Court of competent jurisdiction, and UHAC regulations in order to qualify all six (6) bedrooms of the Group Home as affordable housing rental units for supportive and special needs housing thereby permitting the Borough to receive credit for said units; and

**WHEREAS**, further, pursuant to prior COAH Regulations, and approval by COAH or comparable State department or agency, or by a Court of competent jurisdiction, for the units to qualify as affordable housing units in order for the Borough to receive credit, the bedrooms shall comply with applicable law and UHAC regulations, with the exception of the standard UHAC affirmative marketing requirements for non-special needs housing; and Our house will work with the DDD in placing income qualified individuals in these Units; and

**WHEREAS**, Our House and the Borough wish to enter into an agreement providing for the financial contribution by the Borough for the renovation and operation of the Group Home, in exchange for the establishment and preservation of affordability controls and deed restrictions on the Property for the Group Home.

## AFFORDABLE HOUSING AGREEMENT

### Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual covenants, agreements, conditions, understandings and undertakings hereinafter contained and set forth, the parties hereto, and for their successor and assigns, hereby agree as follows:

#### ARTICLE I

#### DEFINITIONS

Section 1.1. Definitions. Certain terms used in this Agreement are defined in this Section and/or other portions of this Agreement by reference to other documents. Each term defined shall have the meaning given it unless the context clearly indicates otherwise. The following terms are defined in this Section:

1. “Administrative agent” shall be the entity responsible for administering the affordability controls for the Borough pursuant to UHAC regulations;
2. “Affordable Housing Credit” shall have the meaning set forth in Section 3.2(c) of this Agreement, with one unit of credit for each bedroom;
3. “Affordable Housing Credit Loss Event” shall have the meaning set forth in Section 3.3 of this Agreement;
4. “Event of Default” shall have the meaning set forth in Section 5.1 of this Agreement;
5. “Forced Delay” shall mean delay or delays due to: governmental action, or lack thereof, beyond the reasonable and customary period of time expectation for governmental action (for example, the issuance of a building permit); shortages or unavailability of materials; labor disputes (including, but not limited to, strikes, slow-downs, job actions, picketing and/or secondary boycotts); fire, explosion or other casualty; delays in transportation; delays due to adverse weather conditions; acts of God; directives or requests by any governmental entity, authority, agency or department; any court or administrative orders or regulations; adjustments of insurance; acts of declared or undeclared war, warlike conditions in this or any foreign country, acts of terrorism, public disorder, riot or civil commotion; or by anything else beyond the reasonable control of Our House, or its agents, employees or contractors.
6. “Hazardous Substances” shall mean any pollutants, contaminants, or industrial, toxic, hazardous, or extremely hazardous chemicals, wastes, materials or substances which are defined, determined, classified or identified as such in any Hazardous Substances Law, including, without limitation: oil, petroleum, petroleum by-products, friable asbestos, polychlorinated biphenyls, and urea formaldehyde;

## AFFORDABLE HOUSING AGREEMENT

### Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home

7. "Hazardous Substances Law" shall mean all applicable statutes, laws, acts, ordinances, rules, regulations, orders, decrees, and rulings of any federal, New Jersey and/or local governmental or quasi-governmental body, agency, board, commission and/or court relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release and/or transportation of Hazardous Substances including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended, The Resource Conservation and Recovery Act of 1976, as now or hereafter amended, and the Environmental Control Laws of the State of New Jersey as now or hereafter amended, and all regulations respectively promulgated thereunder;

8. "Plans and Specifications" shall mean those plans and specifications which are approved by the Borough Engineer, Borough Construction Official, or other Borough approving authority.

9. "Group Home" shall mean the group home for adults with developmental disabilities, with not less than six (6) bedrooms, to be maintained on the Property.

10. "Supportive and special needs housing" shall mean "group homes for people with developmental disabilities and mental illness as licensed and/or regulated by the New Jersey Department of Human Services.

11. "Unit" shall mean one of the six (6) individual very low income restricted affordable housing rental bedrooms at the Group Home which are subject to a minimum thirty (30) year affordable housing deed restriction.

Section 1.2. Headings. The headings of this Agreement are for convenience only and shall not define or limit the provisions of this Agreement.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of Our House. Our House represents and covenants that:

(a) Our House is a duly organized not-for-profit, 501(c)(3) organization, and validly existing under the laws of the State of New Jersey, and doing business in the State of New Jersey;

(b) To the best of its knowledge, Our House is not in violation of or in conflict with any applicable provisions of the laws of the State of New Jersey or any other agreement related to the Group Home which would impair its ability to carry out its obligations under this Agreement;

(c) Our House is empowered to enter into the transactions contemplated by this Agreement;

(d) Our House has duly authorized the execution, delivery, and performance of this Agreement;

## AFFORDABLE HOUSING AGREEMENT

### Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home

(e) Our House will do all things in its power required of it in order to maintain its existence, perform its obligations hereunder, and assure the assumption of its obligations hereunder by any successor body;

(f) There is no litigation or proceeding pending, or to the knowledge of Our House threatened, against Our House, or any other person or entity affecting in any material manner whatsoever the right of Our House to execute this Agreement or to otherwise comply with its obligations contained in this Agreement;

(g) When executed by duly authorized officers of Our House, this Agreement will be binding upon Our House and enforceable in accordance with its terms;

(h) Intentionally omitted;

(i) Our House shall maintain control over the Group Home, throughout and at the completion of renovations, and shall continue to, and permit and cooperate with the Borough's administrative agent to monitor the Units to ensure compliance with the affordability controls set forth herein, the Deed Restriction, UHAC regulations, and the DDD requirements;

(j) The Group Home shall be licensed as required by the DDD, DCF or comparable agency one project construction is completed and certificates of occupancy for each dwelling is issued, and Our House or its designee covenants that it will maintain such license in good standing throughout the term of this Agreement, and throughout the term of the Deed Restriction for the Property, and Our House shall provide the Borough with a copy of any required License from DDD, DCF or comparable agency annually, upon receipt of same from the DDD, DCF or comparable agency;

(k) The Group Home shall not be age-restricted, and shall not be restricted to youth under eighteen (18) years of age;

(l) The Group Home shall be consistent with and meet the site suitability criteria of the State Development and Redevelopment Plan;

(m) Our House or its designee agrees to work with the Borough and its administrative agent to comply with COAH or comparable State department or agency, or by a Court of competent jurisdiction, and UHAC regulations with the exception of the affirmative marketing requirements of N.J.A.C. 5:80-26.15, and the affordability average and bedroom distribution requirements of N.J.A.C. 5:80-26.3, unless otherwise agreed to herein; and

(n) Our House or its designee agrees to annually provide the Borough and the Administrative agent a list of all current residents of the Group Home, along with all requested documentation and proofs required for the income verification and certification that such residents meet the very low-income requirement (30% of regional median income) to qualify as affordable housing, including a copy of all existing approvals, licenses and certifications provided by the DDD.

Section 2.2. Representations and Covenants of the Borough. The Borough represents and covenants that: (a) it is empowered to enter into the transactions contemplated by this Agreement; (b) it has duly authorized the execution, delivery and performance of this Agreement; (c) there is no litigation or proceeding pending, or to the knowledge of the Borough threatened, against the Borough or any other person affecting in any material manner whatsoever the right of the Borough to execute this Agreement or to otherwise comply with its obligations contained in

## AFFORDABLE HOUSING AGREEMENT

### Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home

this Agreement; and (d) it will cooperate in responding to reasonable requests for the operation of the Group Home.

#### ARTICLE III

##### TERMS OF AFFORDABLE HOUSING CONTRIBUTION

###### Section 3.1. Borough's Financial Contribution.

(a) The Borough agrees to provide a financial contribution in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars to Our House. Such contribution shall be made within ten (10) business days upon receipt of the fully executed Affordable Housing Deed Restriction for the Property pursuant to the terms of this Agreement, subject to approval by the governing body of the Borough.

###### Section 3.2. Conditions of Contribution.

(a) Our House shall operate the Group Home – i.e. rental of the six (6) very low-income restricted units – in accordance with the terms of this Agreement, the Borough's Affordable Housing Ordinances, the regulations, rules and/or orders issued by COAH or comparable State department or agency, or by a Court of competent jurisdiction, and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et. seq.*, as may be amended from time to time, along with all other applicable rules and regulations, for credit as a six (6) unit, very low-income restricted affordable housing rental project. Our House agrees to rent the affordable units in strict accordance with same. Our House will work with the DDD to place income qualified individuals in these Units. All of the units shall be restricted as very low income rental units.

(b) Our House shall have caused to be properly entered into the chain of title for the Property, and recorded with the Somerset County Clerk's office, a deed restriction applicable for each of the six (6) affordable housing units (bedrooms) at the Group Home, and putting into place thirty (30) years of affordability controls, restricting the affordable units by the filing of the Mandatory Deed Restriction for Rental Property as required by N.J.A.C. 5:80-26.11 and Appendix E-2, and approved by COAH in accordance with the UHAC Regulations. A copy of said Deed Restriction shall be provided to the Borough Attorney for review and approval prior to recording. Recording of the approved form of Deed Restriction by Our House shall expressly be considered a condition for the Borough's financial contribution to Our House.

(c) Our House shall provide proof of recording of the COAH deed restriction for the Group Home to the Borough Attorney by providing a copy of the deed restriction with the "recorded" stamp of the Somerset County Clerk. The documents which create the COAH deed restrictions on the units shall contain the following provision:

## AFFORDABLE HOUSING AGREEMENT

### **Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

“Sale and use of the property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:50-26.1, et seq., the “Regulations”) and any amendments, changes or supplements thereto. Consistent with the Regulations, the following covenants (the “Covenants”) shall run with the land for the period of time commencing upon the earlier of (a) the date hereof, or (b) the prior commencement of the “Control Period”, as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

In accordance with N.J.A.C. 5:80-26.5, each restricted unit shall remain subject to the affordability controls set forth therein during the Control Period until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the affordability controls for a period of at least thirty (30) years.”

(d) Our House shall have provided the Borough with a copy of good standing certificate.

(e) The Group Home shall be in compliance with all Hazardous Substance Laws and, to the extent applicable, the Group Home shall have received all necessary governmental approvals for any Hazardous Substances remediation plan required in connection with the renovation and maintenance of the Group Home.

(f) Our House shall be the owner and operator of the Group Home at all times during the term of the affordable housing restriction period for the Property. Any sale of the Property or transfer of operation of the Group Home to any other entity or other use not specifically for the provision of residential, vocational, educational, recreational and support services to low income adults with developmental disabilities shall require prior written approval by the Borough, which approval shall not be unreasonably withheld, conditioned, or delayed, provided that any such assignee shall agree to assume all obligations of Our House pursuant to this Agreement and that any such assignment shall be in accordance with the requirements of any applicable legal requirements, including, but not limited to, any applicable requirements of COAH, the DDD, and/or DCF, which may be now or hereinafter be in effect with respect to the ownership and operation of the Group Home.

## ARTICLE IV

### REGULATORY TERMS AND CONDITIONS

Section 4.1. Limitation on the Borough’s Obligation. The Borough shall not be liable under this Agreement to Our House or any other party for the completion of, or failure to complete, any activities which are part of the construction or renovation of the Group Home.

## AFFORDABLE HOUSING AGREEMENT

### **Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

Section 4.2. Equal Opportunity. During the construction/renovation of the Group Home, Our House shall not discriminate on the basis of race, color, creed, religion, sex, sexual orientation, age, disability, marital status, condition of Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related complex, national origin or ancestry in the hiring, firing, promoting, or demoting, of any person engaged in the construction work.

Section 4.3 Maintenance of the Group Home. Our House or its designee shall maintain the Group Home in good condition and in compliance with all applicable health, safety, building, fire, zoning, subdivision, and environmental laws, regulations, codes and ordinances, in a manner consistent with group homes providing Supportive and special needs housing of similar age and size in Somerset County, New Jersey.

## ARTICLE V

### DEFAULT AND REMEDIES

Section 5.1. Events of Default. Each of the following shall constitute an “Event of Default” hereunder:

(a) Failure of Our House to materially comply with terms, provisions, or conditions of this Agreement and failure to cure the same, subject to Forced Delays, within thirty (30) days of receipt of written notice by the Borough specifying such failure (or if such failure to perform cannot be cured within thirty (30) days, failure to commence cure within thirty (30) days after receipt of such notice and thereafter diligently pursue such cure within one hundred twenty (120) days after receipt of such notice);

(b) Failure of Our House to utilize the Group Home and the Property in a manner to qualify as affordable housing units as set forth herein;

(c) The filing of any voluntary petition in bankruptcy court or otherwise seeking relief from creditors by or against Our House;

(d) Our House shall make an assignment for the benefit of creditors, or shall submit in writing its inability to pay its debts generally as they become due;

(e) Our House consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of Our House, or of the whole or any substantial part of the property or assets of Our House, and such order, judgment or decree shall remain unvacated or not set aside or unstayed for one hundred twenty (120) days;

## AFFORDABLE HOUSING AGREEMENT

### **Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

(f) Material misrepresentation or material misstatement of fact when made in any written document and/or written agreement by Our House or any of its officers or representatives to the Borough.

(g) Sale or transfer of the Group Home or the Property by Our House without the prior written consent of the Borough in violation of the terms of this Agreement.

(h) Failure of Our House or its designee to apply for any required licensure from the DHS, DDD or such other appropriate agency as per the terms of this Agreement.

Section 5.2. Notices. Our House shall, with reasonable promptness, but in all events within ten (10) days after it has actual knowledge thereof, notify the Borough in writing of the occurrence of any act, event or condition which constitutes, or which after notice or lapse of time or both would constitute, an Event of Default. Such notification shall include a written statement of any remedial or curative actions, which Our House proposes to undertake to cure or remedy such default.

Section 5.3. Remedies. Upon the occurrence and during the continuance of an Event of Default under this Agreement, but only after all cure provisions have been exhausted, the Borough shall have the right to take any or all of the following actions against Our House or any affiliated entities:

(a) Institute appropriate proceedings to specifically enforce performance hereof; and

(b) Institute proceedings to have the refund of the financial contribution made by the Borough.

Section 5.4. Attorney's Fees and Costs. Our House agrees to pay or cause to be paid, promptly upon demand by the Borough, reasonable attorney's fees actually incurred and all reasonable costs and expenses actually incurred in connection with such enforcement or exercise of remedies of the Borough hereunder.

Section 5.5. Right to Cure Defaults. The Borough shall give written notice of each default of which it has knowledge to Our House. Except as otherwise provided herein, Our House shall have the right to cure any default existing under this Agreement within ninety (90) days of the receipt of notice of default from the Borough.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 6.1. Agreement Term. The term of this Agreement shall commence upon the date this Agreement has been fully executed by all parties hereto and the terms, restrictions and

## AFFORDABLE HOUSING AGREEMENT

### Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home

covenants of this Agreement shall terminate upon thirty (30) years from the commencement of this Agreement, unless extended by amendment of this Agreement by the Parties hereto.

Section 6.2. Hold the Borough Harmless from Claims; Insurance. Our House hereby agrees to defend and hold the Borough, its officials, appointees, employees and contractors, harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with any loss of life, personal injury, damage to property, breach of contract or any other claims, actions, or damages arising from or out of the construction, renovation or operation of the Group Home by Our House other than and to the extent caused by the willful actions or omissions or recklessness or negligence of the Borough.

Our House shall carry and maintain general liability insurance for bodily injury in the amount not less than one million (\$1,000,000) dollars per occurrence, and liability insurance for property damage in the amount not less than one million (\$1,000,000) dollars per occurrence, with excess umbrella liability coverage of not less than two million (\$2,000,000) dollars, for the duration of this Agreement, and throughout the duration of the Deed Restriction for the Property. The insurance policies shall provide the Borough as an additional insured, and the policy shall further provide that the Borough will be notified at least thirty (30) days in advance of cancellation or material change in the policy.

Section 6.3. Notices. All notices given in connection herewith shall be deemed effective upon receipt (as evidenced by the U.S. Mail return receipt or commercial delivery service receipt) or refusal to accept delivery, and shall be given by personal delivery, express overnight delivery service, or placed in the U.S. Mail, registered, with return receipt requested, and postage prepaid. Any of the following parties may effect a change of address for notice purposes by written notice thereof to all of the other following parties:

If to Our House: Our House, Inc..  
76 Floral Avenue  
Murray Hill, NJ 07974-1511  
c/o Michele DelCorsano, President and CEO

with a copy to: Murphy Schiller & Wilkes LLP  
24 Commerce Street, 12<sup>th</sup> Floor  
Newark, NJ 07102  
Attn: Matthew J. Schiller, Esq.

If to the Borough: Borough of Watchung  
15 Mountain Boulevard  
Watchung, New Jersey 07069  
Attn: Borough Clerk

with a copy to: Joseph V. Sordillo, Esq.  
DiFrancesco Bateman, PC

## AFFORDABLE HOUSING AGREEMENT

### **Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

15 Mountain Boulevard  
Warren, New Jersey 07059

Section 6.4. Entire Agreement. This Agreement, including the exhibits and attachments incorporated herein, expresses the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings, agreements, representations, or arrangements, oral or written, between the parties hereto relating to the subject matter of this Agreement, all of which are merged into this Agreement.

Section 6.5. Severability. Each provision of this Agreement is intended to be severable to the extent that such Severability does not materially affect the basic understanding of the parties as reflected in this Agreement. In the event that any one or more provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect by a final, non-appealable decision of a court of competent jurisdiction, the same shall not invalidate or otherwise affect any other provision of this Agreement, and this Agreement shall be construed as if such an invalid, illegal, or unenforceable provision had never been contained herein, provided such Severability does not materially affect the basic understanding of the parties as reflected in this Agreement.

Section 6.6. Counterparts. This Agreement and any amendments hereto may be executed by the parties hereto in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

Section 6.7. Further Assurances. The parties hereto shall cooperate and take such action, give assurances and execute and deliver such documents as may be reasonably required by the other party in order to effectuate the intent, purposes and provisions of this Agreement and to confirm to third parties the existence and good standing of this Agreement.

Section 6.8. Successors. This Agreement shall be binding upon and inure to the benefit of Our House and the Borough and their respective successors and assigns.

Section 6.10. The Borough Not a Joint Venturer. The Borough, by making this Agreement or by any action pursuant hereto, will not be deemed a partner or joint venturer with Our House, and Our House and the Borough each agree to hold the other harmless for any damages and expenses resulting from such a construction of the relationship of the parties or any assertion thereto.

Section 6.11. Applicable Law. All actions and documents in connection with this Agreement shall be governed by and construed in conformity with the laws of the State of New Jersey. The parties hereto consent to be sued in New Jersey Superior Court-Somerset County in any action to enforce the provisions of this Agreement.

Section 6.12. Modification and Assignment. The terms of this Agreement may not be waived, modified, or changed in any way by implication, correspondence, or otherwise unless such

## AFFORDABLE HOUSING AGREEMENT

### **Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

waiver, modification, or change is made in the form of a written amendment to this Agreement signed by both parties. Our House shall not assign or transfer this Agreement to an unaffiliated entity, without written consent of the Borough, consent not to be unreasonably withheld, in accordance with the terms and conditions outlined in Section 3.4 hereof. Nothing in this Agreement, however, shall limit or prohibit Our House from assigning its operating obligations to an entity not a party hereto.

Section 6.13. Captions and Headings. The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to limit or enlarge the terms hereof.

Section 6.14. Waiver. A waiver by the Borough of any of the terms and conditions herein shall be in writing and shall not constitute a continuing waiver of said terms and conditions.

Section 6.15. Recording of Agreement. This Agreement may be recorded in the chain of title with the Somerset County Clerk for the Property simultaneously with the recording of the Affordable Housing Deed restriction.

\*\*\*signature page follows\*\*\*


**AFFORDABLE HOUSING AGREEMENT**

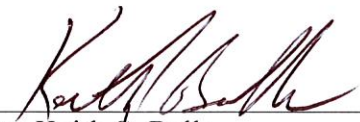
**Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

IN WITNESS WHEREOF, the parties hereto have caused this Housing Trust Fund Agreement to be executed under seal by their duly authorized signatories.

ATTEST:


**THE BOROUGH OF WATCHUNG**  
a NJ Municipal Corporation

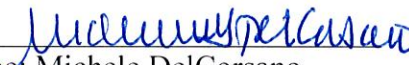
By:   
Name: Edith G. Gil  
Title: Borough Clerk  
7/15/2022

By:   
Name: Keith S. Balla  
Title: Mayor  
Date: July 15, 2022

ATTEST:

**OUR HOUSE, INC.**

By:   
Name: Diane L. Dritscoll  
Title: Dir. Housing Dev.

By:   
Name: Michele DelCorsano  
Title: President and CEO  
Date: July 18, 2022



**AFFORDABLE HOUSING AGREEMENT**

**Establishing Affordability Controls on Six (6) Income-Restricted Units to be located in a Group Home**

STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF Union )

I CERTIFY that on July 18, 2022, Diane Driscoll (name of attesting witness) personally came before me acknowledged under oath, to my satisfaction, that:

- a) this person is the Dir. of Housing Dev (title of attesting witness) of OUR HOUSE, INC., the non-profit, 501(c)(3) entity named in this document;
- b) this person is the attesting witness to the signing of this document by the proper officer who is Michelle DeCorsario (name), the CEO (title) of the entity;
- c) this document was signed and delivered by the entity as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- d) this person signed this proof to attest to the truth of these facts.

Michelle DeCorsario  
Name: Michelle DeCorsario  
Title: CEO

Signed and sworn to before me on this 18 day of July, 2022.

Catherine Colford  
Name:  
Title:

Catherine Colford  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES Dec. 2, 2024

# Deed Restriction

## DEED-RESTRICTED AFFORDABLE HOUSING PROPERTY WITH RESTRICTIONS ON RESALE AND REFINANCING

To Rental Property for Shared Supportive Housing  
With Covenants Restricting Rentals, Conveyance and Improvements  
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the 18<sup>th</sup> day of October, 2022 by the Borough of Watchung, County of Somerset (the "Municipality"), with offices at 15 Mountain Blvd. Watchung New Jersey 07069, and Our House, Inc., a New Jersey Domestic Non-Profit Corporation having offices at 76 Floral Avenue, Murray Hill, New Jersey 07974, the developer/sponsor (the "Owner") of a residential very low, low- or moderate rental project for shared supportive housing (the "Project"):

### WITNESSETH

#### Article I. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

#### Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of the Borough of Watchung, County of Somerset, State of New Jersey, and described more specifically as Block: 7004 Lot: 24 known by the street address:

103 High Tor Drive  
Watchung, New Jersey 07069

*This unit has four (4) bedrooms for Special Needs Tenants*

#### Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the date on which the first certified tenant occupies the unit, and shall and expire as determined under the Uniform Controls, as defined below.

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years; and
2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant or contract.

A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, et seq, the "Uniform Controls").

B. The land and property shall be used solely for the purpose of providing rental dwelling units for very-low-income (making 30 percent or less of median income in the housing region, as defined in the New Jersey Fair Housing Act), persons in need of supportive and special needs housing. While Group Homes are exempt from income eligibility review by the Administrative Agent, no commitment for this group home shall be given or implied by Our House Inc., its successors or assigns securing documentation that affirms the household's income is at or below 30 percent of median income in the housing region.

C. So long as any affordable dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent and Municipality.

D. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units unless requested by Our House, Inc., its successors or assigns and approved by the Administrative Agent and The Borough of Watchung, same to be in accordance with all applicable regulations as they may be amended from time to time.

E. The affordability controls will remain in effect despite the occurrence of any of the following events: a sublease or assignment of the lease of the group home; a sale or other voluntary or involuntary transfer of the ownership of the group home; or, the entry and enforcement of any judgment of foreclosure.

F. The Owner, its successors or assigns shall notify the Administrative Agent and Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service of such foreclosure action upon Owner.

G. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Municipality and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of very low, low and moderate-income housing.

A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Municipality shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

Article 5. Other Provisions

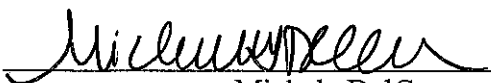
The Owner shall cooperate in following and complying with the Fair Housing Act and with all applicable rules and regulations of COAH, any successor State agency, and the New Jersey Superior Court, and shall cooperate in any and all necessary actions, to the extent such cooperation is necessary, to assist the Municipality in fulfilling its affordable housing obligation with respect to the Property. The Owner shall also complete as applicable, any required monitoring forms within twenty (20) days of a request by the Municipality.

The Restrictions set forth herein shall be binding on the Owner, its successors and assigns and shall run with the Property.


[signature page follows]

IN WITNESS WHEREOF, the Municipality and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

OUR HOUSE, INC.

By:   
Michele DelCorsano  
President & CEO

APPROVED BY THE BOROUGH OF WATCHUNG

By:   
Keith S. Balla  
Mayor

ACKNOWLEDGEMENTS

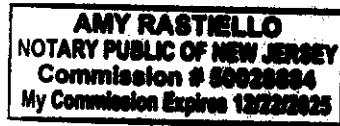
STATE OF NEW JERSEY )  
 ) SS.:  
COUNTY OF Union )

I CERTIFY that on this the 13 day of October, 2022, Michele DelCorsano personally came before me and stated to my satisfaction that this person:

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as President & CEO of Our House, Inc., the entity named in this instrument; and
- (c) executed this instrument as the act of the entity named in this instrument.

*A. Rastello*

NOTARY PUBLIC



STATE OF NEW JERSEY )  
 ) SS.:  
COUNTY OF )

I CERTIFY that on this the 18 day of October, 2022 Keith S. Balla personally came before me and stated to my satisfaction that this person:

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as Mayor of the Borough of Watchung, the entity named in this instrument; and
- (c) executed this instrument as the act of the entity named in this instrument.

*Regina Angelo*

NOTARY PUBLIC

**Regina Angelo**  
**Notary Public of New Jersey**  
**My Commission Expires Jan. 3, 2024**

# Appendix 10

**BOROUGH OF WATCHUNG  
BOARD OF ADJUSTMENT**

**APPLICATION NO. BA 22-02**

Divya Thakur  
990 Somerset Street  
Watchung, New Jersey  
Block 4401, Lot 3

**RESOLUTION BA 23-R10**

**WHEREAS, DIVYA THAKUR** (the “Applicant”) seeks amended site plan approval, and use and bulk variance relief, in connection with his proposal to convert a mixed-use building, into a residential building with three (3) apartment units, at property located within the B-B (Professional and Office) Zone, designated on the Official Tax Map of the Borough of Watchung (the “Borough”) as Lot 3 within Block 4401, more commonly known as 990 Somerset Street, Watchung (the “Property” or the “Site”); and

**WHEREAS**, the Applicant seeks the following variance relief:

1. A variance pursuant to N.J.S.A. 40:55D-70(d)(1) (a "(d)(1) use variance"), to permit the use of the existing principal structure on the Property as a three (3) unit, multi-family residential apartment building, whereas residential uses of any sort are not permitted in the B-B Zone, pursuant to Section 28-404, *et seq.*, of the Borough of Watchung Land Development Ordinance (the “Ordinance”);
2. A bulk variance to permit the expansion of the existing principal structure on the Property to a proposed height of 36.5', whereas the maximum permitted building height in the B-B Zone is 35', pursuant to Section 28-407.C.1 of the Ordinance; and
3. A bulk variance to permit the expansion of the existing principal structure on the Property to three (3) stories, whereas the maximum permitted number of stories on any building in the B-B Zone is 2.5 stories, pursuant to Section 28-407.C.1 of the Ordinance; and

**WHEREAS**, public hearings on notice were held on such application on December 8, 2022 and June 8, 2023, at which times interested citizens were afforded an opportunity to appear and be heard; and

**WHEREAS**, the Board of Adjustment of the Borough (the “Board”), after carefully considering the evidence presented by the Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Property comprises an area of approximately 10,681 square-feet (~0.25 acres) and fronts the north side of Somerset Street, just southwest of the Watchung Circle. Uses surrounding the Property include the Watchung Rescue Squad to the north, a two-story commercial building to the east, and a Shell gas station across Somerset Street to the south. The Property is presently improved with a 2.5-story, mixed-use building that features commercial space on the first floor and residential spaces on the second and third floors, as well as ancillary improvements including a paved driveway/parking area that wraps around the existing building, retaining walls, and a portion of sidewalk.
2. The Applicant proposes to convert the existing principal structure on the Property into a multi-family residential building that would support three (3) apartment units. Under the proposal, the building's overall height would be raised to 36.5' and the structure would feature three (3) full stories with each proposed apartment unit comprising a single floor. The Applicant would also install separate exterior staircases for entry/exit to the second and third floor units, renovate the driveway/parking area to support seven (7) parking stalls, and make other ancillary alterations to support the proposed multi-family residential use. Residential uses are not permitted, and buildings are limited to a height of 35' and three (3) stories in the B-B Zone. The criteria for the requested use variance relief is governed by N.J.S.A. 40:55D-70(d)(1) and the criteria for the requested building height and story related variances is governed by N.J.S.A. 40:55D-70(c).
3. On March 6, 1986, by way of Resolution "BA #86-7," the Board granted preliminary and final site plan approval, and variance relief, to permit the use of the existing building on the Property as a mixed-use space, with a commercial unit on the first floor and residential uses on the second and third floors (the "1986 Approval"). As per Condition No. 3 of the 1986 Approval Resolution, the Board required that the residential uses of the Property would terminate at the expiration of the then-active leases, resolving that:

"[t]he Property will be used for residential rental for a certain period of time, but when the leases expire the rental period will expire also and the [previous] applicant will not enter into another residential rental."
4. The Applicant submitted the following documents in support of his proposal:
  - a. An Application for Development, under Application No. Ba 22-02, dated August 19, 2022;
  - b. A "Variance Plan" set, prepared by John P. DuPont, P.E., of JPD Engineering, dated March 20, 2023, same consisting of three (3) sheets;
  - c. An architectural plan set, prepared by Anwar Alkhatib, A.I.A., of AK Architecture, LLC, dated August 5, 2022, last revised October 4, 2022, same consisting of three (3) sheets; and

- d. A portion of a location survey concerning the Property, unattributed and undated, same consisting of one (1) standard page.
5. The Board also received and considered the following items pertaining to the application:
  - a. Two (2) review memoranda, prepared by the Board Engineer and Planner, David A. Stires, P.E., P.P., dated November 7, 2022 and May 3, 2023;
  - b. A review memorandum prepared by Stephen Pote and Christopher Vander Fliet, on behalf of the Watchung Historical Committee, undated; and
  - c. A review memorandum prepared by Rachel Funcheon, on behalf of the Watchung Borough Environmental Commission.
6. The Board Attorney advised that he had reviewed the Applicant's notice and associated documents and found same to be sufficient as to content and timeliness, such that the Board had jurisdiction to hear the matter.
7. David A. Stires, P.E., P.P., C.M.E., the Board Engineer and Planner was duly sworn according to law.
8. Allen J. Barkin, Esq., of Schwartz, Barkin & Mitchell, having a business address of 1110 Springfield Road North, Union, entered his appearance on behalf of the Applicant and provided an overview of the proposal.
9. Mr. Barkin proffered that only the second-floor apartment of the existing building on the Property is currently occupied by a tenant, while the ground and third floors are not occupied. Additionally, Mr. Barkin represented Applicant would stipulate, as conditions of approval, to dedicating at least one (1) of the proposed apartment units as an Affordable Housing unit, and making a good-faith, best effort to relocate the mailboxes on the Property to the interior of the Site so that mail delivery trucks would not need to stop on Somerset Street to deliver mail to the Property's tenants.
10. Anwar Alkhatib, A.I.A., of AK Architecture, LLC, having a business address of 151 West Passaic Street, 2<sup>nd</sup> Floor, Rochelle, was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in the field of architecture.

Mr. Alkhatib Architecture Testimony

11. Mr. Alkhatib, utilizing the submitted architectural plans, testified to the proposed floor plan and elevations for the renovations to the existing building and Property, explaining that the Applicant proposes to remodel the existing building on the Property to feature three (3) full floors, to accommodate three (3) residential apartment units with one (1) such unit comprising each floor. Of the three (3) proposed units, he testified that the first-floor unit would be a one-bedroom apartment and the second and third floor units would both be two-bedroom

apartments. Mr. Alkhatib also testified that the ground floor would be remodeled from a commercial space into a residential space and the height of the building would be raised to 36.5' to provide a Building Code-compliant apartment on the third floor. Additionally, he explained that the Applicant would construct a three-story addition to the rear of the building that would afford additional living space for each proposed unit. Mr. Alkhatib further testified that the existing interior staircase, which provides access to the second and third floors from the first floor, would be eliminated and separate exterior staircase entrances for the second and third floor units, as well as a fire escape, would be added. Mr. Alkhatib also indicated that the Applicant would install additional buffer landscaping around the perimeter of the driveway/parking area, to screen the Site.

12. On questioning by members of the Board and the Board's Professionals, Mr. Alkhatib testified that: the proposal meets all applicable standards for width and number of parking stalls; tenants will be limited to two (2) parking stalls per unit; the first floor cannot support two (2) bedrooms due to the orientation of the building's front door, the location of the internal basement access staircase, and the location of the building's chimney; the building's basement is about 6' high, hosts boilers and utility meters, and is only accessible at the ground floor level; and the excessive building height and stories variances are being requested in order to maintain the pitched roof of the existing building for aesthetic purposes.
13. John P. DuPont, P.E., P.P., of JPD Engineering, having a business address of 756 Jackson Road, Stewartsville, was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in the fields of both civil engineering and professional planning. Mr. DuPont introduced into evidence, as **Exhibit A-1**, a "Vehicle Turning Plan," dated June 5, 2023.

Mr. DuPont's Civil Engineering Testimony

14. Mr. DuPont testified to the existing conditions on the Property, explaining that it is in the B-B Zone, comprises about 0.25 acres, and features a 2.5-story building, with commercial space on the ground floor and residential spaces on the second and third floors, and a paved parking area/driveway that encircles the existing building.
15. Mr. DuPont, using **Exhibit A-1**, testified to the proposed improvements to the Property's driveway/parking area. He explained that, under the proposal, the Property's existing paved driveway/parking area would be altered to support seven (7) parking stalls and circulate traffic clockwise, with the entry to the paved area being from the west side of the Property and the exit to the east side. Mr. DuPont stated that the New Jersey Residential Site Improvement Standards (RSIS) and the Ordinance, would both require a minimum of six (6) parking stalls for the proposed development, based on the proposed three-unit residential use. He further testified that the proposed parking stalls would measure 9' by 18' and the paved driveway/parking area would be about 16' wide, with enough room to safely maneuver a large SUV. Additionally, Mr. DuPont testified that the Applicant

would construct a trash bin enclosure within the driveway/parking area and the provision of ADA-accessible and compliant parking stalls on-site is not required.

16. Mr. DuPont testified to the Site's topography, explaining that, based on the submitted topographic survey, an undeveloped portion of the Property, but not the existing building, is located within the 100-year floodplain, and the Applicant had obtained an elevation certificate from the Federal Emergency Management Agency (FEMA), demonstrating same. He further opined that the FEMA floodplain map, which shows a corner of the property within that 100-year flood plain, was inaccurate.

#### Mr. DuPont's Professional Planning Testimony

17. Mr. DuPont testified to the Applicant's request for (d)(1) use variance relief, opining that the continued multi-family residential use of the Property since the 1986 Approval and proposed improvements to the building and driveway/parking area make the Property particularly suited to accommodate the proposed exclusive multi-family residential use. He also opined that the proposal would result in no substantially detrimental impact to the surrounding neighborhood as the intensity of the use on the Property would be reduced with the elimination of the commercial element of the existing building. Additionally, Mr. DuPont opined that, because the Borough's 2020 Master Plan Re-Examination report affirmed that a goal of the Borough is to develop the area surrounding the Watchung Circle into a "Village Center" with a variety of uses, including residential uses, the omission of residential uses from the list of permitted uses in the B-B Zone can be reconciled by accepting that the Ordinance has yet to catch up with the objectives of the Master Plan.
18. Mr. DuPont further testified to the Applicant's request for bulk variance relief, opining that the proposal qualifies for bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2). In this regard, Mr. DuPont opined that the proposal promotes the general welfare by making positive use of the Property, in having it fully occupied, and providing an additional dedicated affordable housing unit in the Borough. He also opined that the proposal promotes a desirable visual environment, as the variance relief for overall building height was requested to maintain the aesthetic contribution of the building's pitched roof. He also opined that the proposed excessive height and number of stories for the existing building would not result in any substantial detriment to the public good, nor would they result in any substantial impairment to the intent and purpose of the Master Plan or the Zoning Ordinance.
19. On questioning by the Board and the Board's professionals, Mr. DuPont testified that the proposed driveway/parking area would not be wide enough for a standard ambulance truck to navigate, though a mail truck or Amazon delivery truck could, and larger delivery trucks would need to enter the driveway/parking area at the west entrance and back-up to return to Somerset Street.

### The Applicant's Testimony

20. Divya Thakur, the Applicant, having an address of 24 Remer Avenue, Springfield, testified that his family owns and operates the Sunoco and Shell gas stations located along the Watchung Circle, near the Property. He added that the impetus behind the proposal was to provide housing for the employees of those service stations, in close proximity to those stations. Additionally, Mr. Thakur testified that he was present on the Property during Hurricane Ida in 2021 and witnessed no flooding in the basement of the existing building at that time.
21. Stephen Pote, member and representative of the Borough's Historic Committee, having an address of 124 Wildwood Terrace, Watchung, was duly sworn according to law. Mr. Pote testified that the Historic Committee was concerned about whether the height of the existing building, following the proposed improvements, would have a negative visual impact on the surrounding neighborhood, though he did not provide an opinion as to whether the proposed design would be visually obtrusive.
22. No member of the Public asked questions of any of the Applicant's witnesses and, except for Mr. Pote, no member of the Public offered comments in support of, or in opposition to, the application.
23. The Applicant, through the witnesses and representatives he presented, stipulated to the conditions of approval contained herein.

**WHEREAS**, after reviewing the evidence submitted, the Board, by a vote of 5 to 1, finds that the Applicant has satisfied his burden of proving an entitlement to the requested amended site plan approval, (d)(1) use variance relief, and bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2), for the following reasons:

### Amended Site Plan Approval

1. In evaluating a request for site plan approval, a land use board considers the development plan provided by an applicant, which is required to be compliant with the site development standards set forth in the Ordinance. The Board finds that the Applicant has demonstrated compliance with such standards, to the extent not modified by the granting of variance relief herein, and so is entitled to the requested amended plan approval.

### Use Variance Relief Pursuant to N.J.S.A. 40:55D-70(d)(1)

2. The Board notes that N.J.S.A. 40:55D-70 requires an applicant to demonstrate both the "positive criteria" and "negative criteria" for the variance relief requested. In the case of (d)(1) use variances, the positive criteria is established by a showing of "special reasons" to permit "a use or principal structure in a district restricted against such use or principal structure." New Jersey Courts recognize three circumstances in which such "special reasons" may be found: (1) where the proposed use inherently

serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer “undue hardship” if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

3. Additionally, as it pertains to all variance relief pursuant to N.J.S.A. 40:55D-70, an applicant must also demonstrate the negative criteria, by demonstrating that the proposed deviation(s) from the requirements of the Ordinance will neither pose a "substantial detriment" to the public good, nor "substantially impair" the intent and purpose of a municipality's master plan and zoning ordinance. In the case of variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) specifically, however, satisfaction of the substantial impairment prong of the negative criteria requires "an enhanced quality of proof." Specifically, in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), the Supreme Court required that:

"[...] in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicant's proofs and the board's findings must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district."

4. Here, the Board concurs with the unrefuted expert testimony of the Applicant's professional planner, Mr. DuPont, in finding that the Applicant has satisfied the positive criteria required for the grant of a (d)(1) use variance because he has demonstrated that the proposal serves the general welfare, in that the Site is particularly suitable for the proposed multi-family residential use. In this regard, the Board finds that the reconfigured onsite circulation plan, size of the existing building (following the proposed improvements), proposed supply of seven (7) parking stalls, trash enclosure, and other improvements will make it such that the Property can effectively accommodate three (3) apartment units on-site. The Board also notes here that the Property has functioned as a mixed-use (commercial with two (2) residential units) for the better part of the past four decades without issue known to the Board, and, as per the representations offered by the Applicant, the Property will serve mainly to provide housing for the employees of the Shell and Sunoco gas stations found within walking distance of the Site. It is for the aforesaid reasons that the Board finds the Site to be particularly suited to function as a multi-family residential use.
5. The Board also concurs with Mr. DuPont's unrefuted expert opinion that the Applicant has demonstrated that it has satisfied its burden of proving the negative criteria for (d)(1) use variance relief. In this regard, the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment to the Borough's Master Plan and the

applicable provisions of the Ordinance. The Board further finds that the Applicant has demonstrated the enhanced quality of proof, as required by Medici.

6. As to the "substantial detriment" prong of the negative criteria for (d)(1) use variance relief, the Board finds that the proposed multi-family residential development will not result in substantial detriment to the character of the neighborhood, or to the public good, because the proposal will result in an aesthetic improvement to the exterior of the existing building on the Property, the proposal does not pose any substantial traffic-related issues, and the proposed exclusively-residential use is relatively consistent with the Property's prior mixed use. Additionally, the Board notes that the proposal will result in the creation of one (1) dedicated affordable housing unit, which this Board finds to be a benefit to the public good. The Board also notes in this regard that no members of the Public appeared to voice concerns with, or otherwise object to, the proposed development, further evidencing a lack of any substantial detriment to the public good.
7. As to the "substantial impairment" prong of the negative criteria for (d)(1) use variance relief, the Board finds that the proposal will not result in substantial impairment to the intent and purpose of the Borough's Master Plan and the Ordinance's use limitations in the B-B Zone. In this regard, the Board agrees with the unrefuted expert testimony offered by the Applicant's professional planner, Mr. DuPont, and recognizes that the Borough Planning Board's 2020 Master Plan Re-Examination Report reaffirmed that a development goal of the Borough is to create a "Village Center" within the vicinity of the Watchung Circle that:

"should be designed and constructed to create a mixed use village environment which includes municipal government offices, retail shops and services, professional offices and residences [...]."

The Board, finds that the proposal is consistent with this goal as it will result in the creation of an exclusively residential use, just southwest of the Watchung Circle, thus contributing to the development of "Village Center" that the Borough desires to feature a wide variety of uses. The Board also recognizes that, while residential development of any kind is not permitted in the B-B Zone, the omission of such use can be attributed to the fact that the Ordinance has yet to catch up with the most recent Master Plan Re-Examination report, which seemingly encourages residential uses in the area surrounding the Watchung Circle, including the B-B Zone and the Property. Therefore, the omission of the proposed use as a permitted use in the B-B Zone can be reconciled, in accordance with Medici. As such, the Board finds that the Applicant has satisfied the enhanced quality of proof required for the requested subsection (d)(1) use variance relief.

**Bulk Variance Relief Pursuant to N.J.S.A. 40:55D-70(c)(2)**

8. To establish an entitlement to variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) (otherwise known as the "(c)(2)" or "flexible-c" variance), an applicant must establish the "positive criteria" by demonstrating that their proposal advances one

of the enumerated goals of the New Jersey Municipal Land Use Law (the “MLUL”), set forth at N.J.S.A. 40:55D-2, and that the zoning benefits to be derived therefrom substantially outweigh the detriments associated therewith.

9. Additionally in the case of variances pursuant to N.J.S.A. 40:55D-70(c)(2), the applicant must also demonstrate the “negative criteria” – that the sought variance relief (1) will not pose a “substantial detriment” to the public good and (2) will not “substantially impair” the intent or purpose of the municipality’s zone plan or zoning ordinance.
10. Here, the Board again concurs with Mr. Dupont's unrefuted expert testimony in finding that the Applicant has satisfied the positive criteria for bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2), because the proposal advances the goals of the MLUL, as set forth and enumerated in subsections (a) and (i) of N.J.S.A. 40:55D-2. The Board, concurring with the expert testimony of Mr. DuPont, finds that the proposal promotes the general welfare, by making positive use of the existing resulting in a relatively low intensity use in the B-B Zone and the creation of at least one (1) additional affordable housing unit in the Borough. The Board also finds that the proposal promotes a desirable visual environment as the deviation from the Ordinance's overall building height requirements serves to maintain the positive aesthetic contribution of the existing building's pitched roof. The Board further finds that these benefits substantially outweigh the relatively modest detriments associated with permitting the excessive height and number of stories added to the existing building on the Property.
11. The Board also again concurs with Mr. Dupont's unrefuted expert testimony that the Applicant has demonstrated that it has satisfied its burden of proving the negative criteria for bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2), as the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment to the Borough's Master Plan and the applicable provisions of the Ordinance.
12. As to the "substantial detriment" prong of the negative criteria for (c)(2) bulk variance relief, the Board reiterates its finding that the proposed development will not result in substantial detriment to the character of the neighborhood, or to the public good, because the proposal will result in an aesthetic improvement to the exterior of the existing building on the Property, the proposal does not pose any substantial traffic-related issues, and the proposed exclusively-residential use is relatively consistent with the Property's prior mixed use. Additionally, the Board again notes that the proposal will result in the creation of at least one (1) dedicated affordable housing unit, which this Board finds to be a benefit to the public good. The Board also again notes that no member of the Public appeared to voice concerns with, or otherwise object, to the proposed development, further evidencing a lack of any substantial detriment to the public good.
13. As to the "substantial impairment" prong of the negative criteria for (c)(2) bulk variance relief, the Board finds that the proposed development will not substantially

impair the intent and purpose of the Borough Master Plan and the applicable provisions of the Ordinance. The Board recognizes that the Ordinance's height restrictions exist to ensure a uniform aesthetic character amongst buildings in the B-B Zone. Here, while the proposed building height and number of stories exceed the limits proscribed by the Ordinance, the exceedance is relatively modest and will not result in an aesthetically displeasing visual environment.

14. As such, the Board finds that the Applicant has demonstrated both the positive and negative criteria for the requested (d)(1) use, and bulk, variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2), and so has established an entitlement to same.

**WHEREAS**, the Board took action on this application at its meeting on June 8, 2023, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Watchung, that the application of **DIVYA THAKUR**, for variance relief as aforesaid, be, and is, hereby granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
2. The Applicant shall comply with the comments raised in Board Engineer and Planner Stires's November 7, 2022 and May 3, 2023 review memoranda pertaining to the application, to the extent not satisfied or otherwise in applicable;
3. The Applicant shall provide, to the Board Planner and Engineer, a copy of the FEMA Elevation Certificate obtained for the subject Property, indicating that the existing building thereon is not within a flood zone;
4. The Applicant shall dedicate one (1) of the three (3) proposed apartment units as an Affordable Housing Unit and comply with all UHAC regulations as to same;
5. The Applicant shall make a good-faith, best effort to relocate the mailboxes on the Property to the interior of the Site, such that mail delivery trucks would not need to stop on Somerset Street to deliver mail to the Property's tenants subject to the review and approval of the Board Engineer;
6. Each unit shall be limited to a maximum of 2 parking stalls;
7. The onsite circulation shall be consistent with the revised plans approved by the Board, including the clockwise onsite circulation;

8. The Applicant shall secure all required approvals in connection with this proposal, including, but not limited to, approval from the County of Somerset Planning Board, Somerset-Union Soil Conservation District, and Borough of Watchung Fire Official, and same shall be subject to the review and approval of the Borough Building and Engineering Department;
9. The aforementioned approval shall be subject to all State, County, and Borough statutes, ordinances, rules and regulations affecting development in the Borough, County, and State;
10. Pursuant to N.J.S.A. 40:55D-47(e) and 52(a), and Section 28-702(A) of the Ordinances, any variance relief herein granted by the Board of Adjustment, permitting the construction, alteration, conversion or enlargement of a building or structure, or use of land, shall expire by limitation unless such construction, alteration, conversion or enlargement or said building or structure, or use of land shall have been commenced within one (1) year from the date of adoption of the resolution of approval;
11. The Applicant shall make a good faith, best effort to rent the 2 market rate units to employees of the Applicant's service stations in Watchung Borough and their families;
12. Pursuant to Section 28-807(E) of the Ordinances, the Applicant shall submit a completed Compliance Review Package to the Deputy Administrative Officer within ninety (90) days of the Board of Adjustment Resolution of Memorialization. In the event the Applicant does not obtain approval for the Compliance Review Package within one (1) year of the Resolution of Memorialization, then the Applicant shall be required to appear before the appropriate Board and seek an extension of time to obtain approval for the Compliance Review Package.

On Motion duly made and seconded, the Board approved the Resolution:

**Roll Call**

	Motion to Grant the Application Date: June 8, 2023						Resolution of Memorialization Date: July 11, 2023					
Member	Motion	2nd	Aye	Nay	Abstain	Absent	Motion	2nd	Aye	Nay	Ineligible	Absent
Cronheim				X					X			
Hunsinger			X					X				
Brown	X											
Sopko						X					X	
Fechtner			X									
Panzarella							X					
Taraschi		X										
Xie						X					X	

The undersigned certifies that the foregoing is a true and accurate copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Watchung at its meeting on July 11, 2023.




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TAMMY VETUSCHI, BOARD CLERK

# Appendix 11

## **APPENDIX 11**

### **Evaluation of Fourth Round Overlay Zones and Updated Compliance Evaluation**

This addendum outlines the modifications to the Borough’s existing and overlay zones per Borough discussion with the Share Housing Center (FSHC). Further, it provides additional evaluation of these overlay zones per comments received by the FSHC including but not limited to evaluation of these zones per N.J.A.C. 5:93-1.3:

“Approvable site” means a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

“Available site” means a site with a clear title, free of encumbrances which preclude development for low- and moderate-income housing.

“Developable site” means a site that has access to appropriate water and sewer infrastructure and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by NJDEP.

“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets, and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

#### **Proposed “Route 22 Affordable Housing Overlay Zone -2”**

The Borough’s Fourth Round plan proposes a second overlay zone along Route 22- a new “Route 22 Affordable Housing Overlay District – 2” zone. In the submitted plan, this overlay zone would cover Block 6201, Lots 4, 5.01, 5.02 and 6 (1692-1996 Route 22). The site is currently a commercially-developed site in the Borough’s Highway Development (H-D) zone. The zone would permit a multifamily development at a density of 18 units per acre (with a 20% affordable set-aside).

The Borough agrees with FSHC’s suggestion to use the proposed Route 22 overlay zone towards the 25% unmet need requirement. Further, based on input received from FSHC, the Borough has agreed to the following amendments to this overlay zone:

- Inclusion of Block 6301 Lot 1 (the site currently occupied by Mattress Firm at 1702 Route 22) in that proposed overlay zone.

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The addition of this site, along with vacation of the right-of-way dividing these sites - very possible as this street provides access to no other sites, would bring the site area to approximately 2.1 acres. With a density of 18 units per acre, the proposed overlay zone would now allow for the development of a 36-unit multi-family development with 8 affordable units.

The new "Route 22 Affordable Housing Overlay District - 2" has been largely modeled after the Borough's existing "Route 22 Affordable Housing Overlay District" which exists in another area along Route 22 and was created to address a portion of the Borough's third round obligation. The bulk requirements of the "Route 22 Affordable Housing Overlay District - 2" zone are also consistent with relevant portions of the surrounding H-D zone including similar building and impervious coverage requirements.

Roughly 90% of the site has been developed with buildings and parking areas in the front of the site along Route 22 with a large outside storage area located behind the buildings. The rear 10% of the site is forested. The far rear of the site contains a small portion of the flood plain associated with Green Brook. The site is serviced by necessary public infrastructure (including public water and water).

The Borough's believes that the Fair Share Plan demonstrates that this proposed overlay zone (particularly with its permitted density of 18 units per acre) creates a realistic opportunity for the

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creation of affordable housing. The proposed 18 unit/ acre density is: (1) greater than the 14 unit/ acre density of the Crystal Ridge development (also located along Route 22); (2) three times the density of the Bonnie Burn development currently under development; and (3) consistent with the density of the 18 unit/ acre density of the existing Route 22 overlay zone relatively-recently enacted in the Route 22 corridor (which the Borough contends creates a realistic opportunity).

The inclusion of Block 6301 Lot 1 (the site currently occupied by Mattress Firm at 1702 Route 22) in this proposed overlay zone, as recommended by FSHC, and the inclusion of roadway area that could be vacated, further enhances the viability of this zone.

The proposed overlay zone is located along US Route 22 with frontage along the highway. Multifamily development would be consistent with the nature of the Route 22 corridor which is characterized by a mixture of commercial uses along with other multifamily development in the vicinity.

The site is available, developable, suitable, and approvable. There are no known encumbrances which preclude development for low- and moderate-income housing. The site has access to appropriate water and sewer infrastructure. The site is adjacent to compatible land uses, has access to appropriate streets and redevelopment of the site with residential use can be done in a manner that is consistent with the environmental policies delineated in N.J.A.C. 5:93-4 (not in wetlands, flood hazard areas, steep slopes). The site can be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site.

Lastly, the analyses below is provided in response to the request from FSHC that the Borough demonstrate that the development contemplated in the proposed overlay zone can be accommodated on the site:

- Based on 36 units required parking is estimated to be 72 spaces (based on RSIS parking requirements and assuming a bedroom split of: 1-bedroom (20); 2-bedroom (60%) and 3-bedroom (20%)). Based on 300 square feet of pavement per space (assuming 9'x18' spaces and 24' aisle width), 72 parking spaces would result in roughly ½ acre of pavement. Considering the roughly 2-acre size of the site, ample room exists on site for necessary parking, with flexibility to do so.
- The proposed impervious coverage of 80% will not impede construction of buildings, parking areas, driveways and walkways serving the development.
- The 40% building coverage limitation will not unduly restrict potential development. The 2-acre site and the 40% permitted building coverage would permit a building footprint of roughly 35,000 square feet. With a permitted building height of 3 stories, the total building square footage would be roughly 105,000. Assuming 15% of the floor area would be dedicated to common areas, would leave square footage for roughly 2,500 square feet per apartment.
- Due to a site depth of roughly 350 feet, the proposed front yard (75 feet) building setback and rear yard building setback (25 feet) would not impede development of the site (resulting in a

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permitted building envelope of up to 250 feet in width). Likewise, with a site width in excess of 325 feet, the proposed building setback requirement (15 feet) would not impede development of the site (the building envelope would be up to 295 feet in width). The proposed building setbacks would result in a large permitted building envelope allowing for ample flexibility in building placement.

**Existing Route 22 Affordable Housing Overlay Zone**

This existing Overlay District encompasses the 5-acre Liccardi Ford Tract (Block 64.02, Lot 3) and a 13.7-acre undeveloped portion of the Mount Saint Mary's Academy Tract (Block 64.02, Lot 5) along the northerly side of US Route 22, encompassing 18.7 acres of land. The zone permits: for-sale multifamily development at density of 14 units per acre with a minimum of 20% affordable sets-aside; and rental multifamily development at a density of 18 units per acre with a 15% affordable set-aside.

Based on input received from FSHC the Borough has agreed to the following amendments to this overlay zone:

- Increase the permitted density for for-sale development from 14 units/ acre up to 18 units/ acre consistent with that already permitted for rental development.
- Increase affordable set-aside for rental developments from 15% up to 20% consistent with that required for for-sale developments.

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With a proposed, consistent, permitted density of 18 units/ acre this zone would continue to create a reasonable incentive for potential redevelopment with affordable housing. At roughly 18 acres in size and a permitted density of 18 units/ acre, if the full extent of the zone was developed, this zone could result in the potential for in excess of 300 total dwelling units (of which at least 60 would be affordable units).

The permitted densities of the Route 22 overlay zone are consistent with the density of the nearby R-M-L-I zone which resulted in the development of the inclusionary Crystal Ridge development including similar bulk requirements including building height and coverages. In fact, the Route 22 overlay zone actually permits a higher permitted density for rental development (at 18 units per acre) than the maximum 14 unit per acre density of the R-M-L-I zone.

The permitted densities of the Route 22 overlay zone (which permits rental developments at a density of 18 unit per acre) is more than three times higher than the permitted density of the Bonnie Burn Redevelopment zone (which permits 230 units on a 40 acre site equating to a density of around 6 units per acre). As addressed herein, that development is under construction and address a significant portion of the Borough's Third Round obligation.

The Borough has reviewed the existing overlay zone ordinance and could not find a single requirement that poses an unnecessary restriction on development (e.g., permitted building and impervious coverages, setbacks, etc.). The requirements of the zone are typical of such multi-family

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zones and consistent with the scale and requirements of nearby commercial zones including the Borough’s Highway Development (H-D) Zone along Route 22 and the Borough’s other multi-family inclusionary zoning districts.

The zone does not contain any streams, riparian zones or flood hazards areas. NJDEP mapping suggests the possible presence of some limited wetlands areas in the forested portions of the zone behind the Liccardi Ford site. There are no other encumbrances known that would preclude development in the overlay zone. The area is served by public water and public sewer infrastructure.

The zone is located along US Route 22 with several hundred of frontage along the highway. Multifamily development would be consistent with the nature of the Route 22 corridor which is characterized by a mixture of commercial uses along with other multifamily development in the vicinity.

The above demonstrates that the zone is “approvable”, “available”, “developable” and “suitable” per N.J.A.C. 5:93-1.3.

**Existing Somerset Street/Watchung Avenue “Triangle” Affordable Housing Overlay District**

This existing overlay district encompasses the “Triangle” area bounded by Watchung Avenue, Somerset Street and Johnston Drive. This district permits mixed-use development as a principal permitted use consisting of first floor commercial uses and residential units on the second and third floors only permitted in conjunction with affordable housing. Residential use is permitted at a density of 6 units/acre for for-sale units (with a 20% affordable set-aside) and 10 units/acre for rental units (with a 15% affordable set-aside).

Based on input received from FSHC the Borough has agreed to the following amendments to this overlay zone:

- Increase the permitted density for for-sale development from 6 units/ acre up to 10 units/ acre consistent with that permitted for rental development.
- Increase affordable set-aside for rental developments from 15% up to 20% consistent with that required for for-sale developments.

The zone is located along County Rt 531 (Watchung Avenue/ Somerset Street) with several hundred of a frontage along these roadways. The mixed-use development permitted under this overlay zone would be consistent with the nature of the “triangle” area which is characterized by a mixture of commercial uses. The permitted scale of development permitted in the zone is consistent with the nature of the “triangle” area while being cognizant of the low-density single-family located in close proximity. The Borough has reviewed the existing overlay zone ordinance and could not find a single requirement that poses an unnecessary restriction on development (e.g., permitted building and impervious coverages, setbacks, etc.).

The zone does not contain any streams, riparian zones or wetlands. There are no environmental constraints known that would preclude redevelopment in the area. There are no other encumbrances known that would preclude development in the overlay zone. The area is served by public water and public

sewer infrastructure.

The above demonstrates that the zone is “approvable”, “available”, “developable” and “suitable” per N.J.A.C. 5:93-1.3.

### **Updated Compliance Evaluation**

Below is an updated analysis of the Borough’s Fourth Round Plan in light of the increased RDP of 36 (from 23) and the changes addressed/ agreed to with FSHC. The analysis demonstrates that the Borough’s Fourth Round Plan remains in compliance with its overall obligation and remains in compliance with respect to the various other requirements (e.g., income, family and rental requirements).

#### **Realistic Development Potential (RDP)/ Bonus Credits**

The rules limit the application of bonus credits to no more than 25% of the municipality’s prospective need obligations. With an adjusted prospective (RDP) need of **36** units, the number of bonus credits that the Borough can claim is capped at **9**.

The affordable housing mechanisms proposed in this plan are eligible for bonus credits as follows:

- *Extension of Expiring Controls*: With 40 affordable units: eligible for 20 bonus credits (0.5 per unit bonus credits for extension of expiring controls)
- *1375 Plainview Avenue*: With 5 affordable units: eligible for 2.5 bonus credits (0.5 per unit bonus credits for redevelopment of an office site)
- *Our House Inc. – Group Home – 103 High Tor Drive*: With 6 affordable special needs units: eligible for 6.0 bonus credits (1.0 per unit bonus credit for development of special needs housing)
- *990 Somerset Street*: With 1 affordable unit: eligible for 0.5 bonus credits (0.5 per unit bonus credits for redevelopment of commercial space into an inclusionary residential development)

After applying the **9** bonus credits to the **36**-unit RDP, the Borough must provide its obligation through the production of at least **27** actual units (exclusive of bonus credits). This requirement will be satisfied as follows:

- *1375 Plainfield Avenue*: 5 units
  - *Our House, Inc Group Home*: 6 units
  - *990 Somerset Street*: 1 unit
  - *Extension of Expiring Controls*: 40 units
    - *Total required*: 27 units
    - *Total provided*: 52 units
-

Age-Restricted Affordable Housing Units

The rules cap the number of affordable housing units restricted to seniors to 30% of the affordable housing units being provided. The plan complies as no senior affordable units are proposed in this plan.

Family Affordable Housing Units

The rules require that at least 50% of the affordable units be available to households with children (e.g., not senior units or group homes). This requirement will be satisfied as follows:

- 1375 Plainfield Avenue: 5 units
- 990 Somerset Street: 1 unit
- Extension of Expiring Controls: 40 units
  
- Total minimum required: 14 units (50% of the 27-unit minimum)/ 18 units (50% of the 36-unit RDP)
- Total provided: 46 units

Rental Affordable Housing Units

The rules require that at least 25% of the affordable units be available rental. This requirement will be satisfied as follows:

- Our House, Inc Group Home: 6 units
- 990 Somerset Street: 1 unit
- Extension of Expiring Controls: 40 units
  
- Total required: 7 units (25% of the 27-unit minimum)/ 9 units (25% of the 36-unit RDP)
- Total provided: 47 units

Family Rental Affordable Housing Units

The rules require that at least 50% of the rental affordable units be available to households with children. This requirement will be satisfied as follows:

- 990 Somerset Street: 1 unit
- Extension of Expiring Controls: 40 units
  
- Total required: 4 units (50% of the rental unit minimum based on the 27-unit minimum)/ 5 units (50% of the rental unit minimum based on the 36-unit RDP)
- Total provided: 41 units

Low-Income Housing Units

The rules require that at least 50% of the affordable units be low-income units (i.e., affordable to households making no more than 50% of the median household income in the housing region). This requirement will be satisfied as follows:

- 1375 Plainfield Avenue: 3 units
- Our House, Inc Group Home: 6 units
- Extension of Expiring Controls: 20 units

Fourth Round–Additional Analyses Watchung  
Borough, Somerset County

- *Total required:* 14 units (50% of the 27-unit minimum)/ 18 units (50% of the 36-unit RDP)
- *Total provided:* 29 units

*Very-Low-Income Housing Units*

The rules require that at least 13% of the affordable units be very-low-income units (i.e., affordable to households making no more than 30% of the median household income in the housing region). This requirement will be satisfied as follows:

- *Our House, Inc Group Home:* 6 units
  - *Total required:* 4 units (13% of the 27-unit minimum)/ 5 units (13% of the 36-unit RDP)
  - *Total provided:* 6 units

*Total Obligation/ Credits*

The 36-unit RDP will be satisfied as follows:

- *Prior Round Surplus:* 8 units
  - *Bonus Credits:* 9 credits
  - *Actual Units:* 52 units
    - *1375 Plainfield Avenue:* 5 units
    - *Our House, Inc Group Home:* 6 units
    - *990 Somerset Street:* 1 unit
    - *Extension of Expiring Controls:* 40 units
- *Total required:* 36
  - *Total provided:* 69

# Appendix 12

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXVIII, ENTITLED "LAND DEVELOPMENT REGULATIONS OF THE BOROUGH OF WATCHUNG" TO ESTABLISH A NEW ROUTE 22 AFFORDABLE HOUSING OVERLAY DISTRICT.**

**ORDINANCE #OR:26/\_\_\_\_\_**

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Watchung, County of Somerset, State of New Jersey as follows:

**SECTION 1.** Section 28-401AC., Route 22 Affordable Housing Overlay District, is amended as follows:

AC. Route 22 Affordable Housing Overlay District

Route 22 Affordable Housing Overlay District" is established as follows:

1. Purpose: The purpose of the Route 22 Affordable Housing Overlay District is to create a realistic opportunity for the creation of low and moderate-income housing as land becomes available for development or redevelopment in the Borough.
2. Area of the Borough to be included in the Overlay District: Block 64.02, Lot 3 and a portion of Block 64.02, Lot 5 as shown on the Route 22 Affordable Housing Overlay District Map.
3. Principal Permitted Uses: Multifamily dwelling units in one or more buildings as an inclusionary affordable residential development, provided that the provisions of subsections 5. through 8. below are met.
4. Permitted Accessory Uses:
  - a. Uses and structures customary to the principal permitted use including, but not limited to private residential garages, parking areas, refuse and recycling areas, swimming pools, tennis courts, club houses for residents, management offices, leasing offices, walking/jogging trails, and dog runs.
  - b. Subsection 28-401B shall apply except as modified in this Subsection 28-401AC.
  - c. All accessory uses except permitted fences, signs, bus shelters shall be located at least twenty (20) feet from the property line.
  - d. Fences and walls, in accordance with §28-502.
  - e. Signs may be provided in accordance with §28-504, and further regulated as follows:
    - (1) Permitted signs shall include one project identification sign per development, residential unit and residential building identification signs, traffic and pedestrian directional signs and other public safety signs.
    - (2) A project identification monument sign shall be permitted at the driveway entrance to the project not exceeding thirty-two (32) square feet in area and eight (8) feet in height including the monument base.

- (3) A monument base constructed of stone or similar material and landscaped shall be provided.
  - (4) Building mounted identification signs or free-standing informational signs shall not exceed four (4) square feet.
  - (5) Signs shall be constructed of stone, wood or similar materials and shall not be internally illuminated.
  - (6) An overall sign plan shall be submitted for review as part of the site plan application.
- f. All accessory uses except permitted fences, signs, bus shelters shall be located at least twenty five (25) feet from the property line.
5. Maximum Gross Density:
- a. For-sale units. Multifamily residential development with units for-sale shall be permitted to have a maximum gross density of ~~fourteen (14)~~ **eighteen (18)** units per acre.
  - b. For-rent units. Multifamily residential development with units for-rent shall be permitted to have a maximum gross density of eighteen (18) units per acre.
6. Affordable Housing Requirements.
- a. For-sale units. Multi-family residential development with units for-sale shall include a minimum of 20 percent of the total number of units for low-and moderate- income households, with at least 13 percent of these affordable units available for households earning 30 percent or less of the median income limit for the Council on Affordable Housing Region 3 or as provided by Order of the Superior Court of New Jersey.
  - b. For-rent units. Multi-family residential development with units for-rent shall include at least ~~20.15~~ percent of the total number of units for low- and moderate-income households, with at least 13 percent of these affordable units available for households earning 30 percent or less of the median income limit for the COAH Region 3 or as provided by Order of the Superior Court of New Jersey.
  - c. The low- and moderate-income units shall be distributed throughout the development, not concentrated in any one building.
  - d. The §28-1000 Affordable Housing Ordinance provisions shall apply.
7. Area, Yard and Other Bulk Requirements:
- a. No principal building or structure shall be located closer than one hundred (100) feet from the Route 22 right-of-way line or closer than twenty-five (25) feet from any side or rear lot line.

- b. The minimum distance between structures shall be one-half (1/2) the sum of the height of the adjacent structures, except that a minimum of fifteen (15) feet shall be maintained when structures abut end to end.
  - c. The maximum building length shall be two hundred (200) feet.
  - d. The minimum number of dwelling units in a building shall be four (4) units and the maximum number of dwelling units in a building shall be thirty-six (36) units.
  - e. The maximum building coverage shall be thirty percent (30%).
  - f. The maximum lot impervious coverage shall be seventy percent (70%).
8. Maximum Building Height:
- a. No building shall exceed thirty-eight (38) feet in height and three (3) stories.
  - b. Building height in feet shall be the vertical distance measured from the average finished grade at the perimeter of the foundation calculated at 20-foot increments to the highest point of the building in the case of flat roofs or to the mean level between the eaves and the highest point of the roof in the case of pitched roofs.
  - c. Building height in stories shall be measured counting as a story the space between the upper surface of any floor and the upper surface of the next floor above it or, if there is no floor above it, then the surface between the floor and the ceiling next above it. Space under a sloped roof that is not habitable and space partially or fully below grade that is not habitable under the State Uniform Construction Code shall not be considered a story or part of a story.
9. Roadways, Off-street Parking and Private Residential Garages:
- a. On-street parking shall be permitted within the development tract.
  - b. Off-street parking may be permitted under or within a building structure, provided that the building shall not exceed the maximum building height.
  - c. The number of required parking spaces shall be in accordance with the New Jersey Residential Site Improvement Standards (RSIS).
  - d. No parking area or driveway shall be located within twenty (20) feet of any property line, excluding intersecting driveways with US Route 22.
  - e. Parking spaces shall be located at least fifteen (15) feet from a residential building, except where a parking space also provides access to an enclosed garage, no such setback shall be required.
10. Other requirements.
- a. Section 28-505, Recreation Required for Multi-Family Development standards shall apply and include:

- (1) A minimum of five percent (5%) of the lot shall be developed as open space and recreation areas, including both active and passive recreation facilities.
  - (2) Recreation facilities shall include play areas for children of all ages.
- b. Section 28-600 Development Requirements and Standards shall apply unless overridden by provisions in this subsection .
  - c. Building Design Standards.
    - (1) All residential buildings shall have similar facade treatments so that they are compatible with one another. Additionally, all sides of any one residential building shall have similar facade treatments.
    - (2) Long buildings shall be broken into facade segments. Any building with a length of over one hundred (100) feet shall have off-set facades at least every thirty (30) feet created with set-back or bump-out sections being one and one-half (1.5) feet or more in depth.
    - (3) A variety of quality materials and architectural features are encouraged to, for example, distinguish the first floor from higher floors, to distinguish top floors from lower floors, and to highlight building entrances.
    - (4) Rooftop HV AC units, if employed, shall be shielded by parapet walls or roof insets if a sloped roof is utilized.
    - (5) Foundation plantings shall be utilized to soften the appearance of first floor and lower walls.

**SECTION 2.** Section 28-419, Somerset Street/ Watchung Avenue Affordable Housing Overlay District, is amended as follows:

A. Purpose and Application.

1. Purpose. The purpose of the Somerset Street/Watchung Avenue Affordable Housing Overlay District is to create a realistic opportunity for the development of affordable housing in accordance with the June 7, 2018, Settlement Agreement between the Borough of Watchung and the Fair Share Housing Center, Inc., and the September 19, 2018, Order on Fairness and Preliminary Compliance Hearing by the Superior Court of New Jersey Law Division Somerset County, Docket No. SOM-L-902-15.
2. Application of Requirements. The Somerset Street/Watchung Avenue Affordable Housing Overlay District permits mixed-use redevelopment consisting of first-floor commercial uses and residential units above within the "Triangle" area bounded by Watchung Avenue, Somerset Street and Johnston Drive. Consistent with the purpose of the district, such mixed-use development shall only be permitted in conjunction with the provision of affordable housing pursuant to § 28-419D, Affordable Housing Requirements. The requirements of the underlying Neighborhood Business (B-A) Zoning District shall remain

in full effect in the area encompassed by this overlay district unless an application is proposed consistent with the requirements of this overlay district. The requirements of this overlay district shall only be applicable to the lands involved in such a mixed-use development application. Lands not included in such a mixed-use development application shall continue to be subject to the requirements of the underlying zoning district.

#### B. Permitted Uses.

1. Principal Permitted Uses. Mixed-use development consisting of commercial development on the first floor and residential units above. Permitted commercial uses on the first floor shall consist of the permitted uses specified in § 28-406.A with respect to the B-A District.
  - a. Such mixed-use development shall only be permitted in conjunction with the provision of affordable housing pursuant to § 28-419D.
2. Accessory Uses Permitted.
  - a. Off-street loading and parking and private nonresidential garages, either attached or detached.
  - b. Storage buildings not exceeding 200 square feet in size and 15 feet in height.
  - c. Fences and walls in accordance with § 28-502.
  - d. Signs in accordance with § 28-504, generally, and the requirements of § 28-504G specifically with respect to sign height, sign area, setback and other such bulk and dimensional requirements.

C. Maximum Gross Density. Residential use is permitted at a maximum gross density of ~~10 six~~ units per acre for for-sale units and 10 units per acre for rental units.

#### D. Affordable Housing Requirements.

1. For-Sale Units. Where for-sale units are provided, a minimum of 20% of the total number of units shall be affordable to low-and moderate-income households, with at least 50% of the affordable units available for households earning 30% or less of the applicable median income limit and 13% of the affordable units available for households earning 30% or less of the applicable median income limit. For the purpose of this section, fractional results shall be rounded to the nearest whole number (e.g., 2.4 would equal a requirement for two affordable units, while 2.5 would result in a requirement for three affordable units).
2. For-Rent Units. Where rental units are provided, a minimum of ~~20% 15%~~ of the total number of units shall be affordable to low- and moderate-income households, with at least 50% of the affordable units available for households earning 30% or less of the applicable median income limit and 13% of the affordable units available for households earning 30% or less of the applicable median income limit. For the purpose of this section, fractional

results shall be rounded to the nearest whole number (e.g., 2.4 would equal a requirement for two affordable units, while 2.5 would result in a requirement for three affordable units).

3. The low- and moderate-income units shall be distributed throughout the development, not concentrated in any one building.
4. Section 28-1000, Affordable Housing, shall apply.

E. Maximum Building Height.

1. No principal building shall exceed 35 feet in height and 2 1/2 stories.
2. No accessory building located within the principal building envelope shall exceed 25 feet in height and two stories.
3. No accessory building located outside the principal building envelope shall exceed 15 feet in height and one story.

F. Area and Yard Requirements for the S-W District.

Principal Building	Requirement
Minimum	
Lot area	10,000 square feet
Lot frontage	100 feet
Lot width	100 feet
Principal Building	
Lot Depth	75 feet
Front yard	30 feet
Side yard - one (both)	5 feet (15 feet)
Rear yard	25 feet
Accessory Building	
Minimum	
Distance to side line	5 feet
Distance to rear line	10 feet
Distance to other building	20 feet
Maximum	
Building coverage	30%
Lot coverage	70%

G. General Requirements.

1. Unless otherwise specifically approved by the Board as part of a site plan application, no merchandise, product, equipment or similar material or objects shall be displayed or stored outside. Where merchandise, products, equipment or similar material or objects are approved by the Board to be displayed or stored outside, the materials shall be suitably

screened to be obscured from view from adjacent residential uses and must be situated within the property lines of the principal use.

2. All areas not utilized for buildings, parking, loading, access aisles and driveways or pedestrian walkways shall be suitably landscaped with shrubs, ground cover, seeding or plantings and maintained in good condition.
3. All buildings shall be compatibly designed whether constructed all at one time or in stages over a period of time. All building walls facing any street or residential use or district shall be suitably finished for aesthetic purposes and shall be compatible in design and scale to the surrounding residential areas.
4. At least the first five feet adjacent to any lot line shall not be used for parking and loading and shall be planted and maintained in lawn areas or ground cover and landscaped with evergreen shrubbery.

H. Off-Street Parking and Loading. Parking spaces and loading areas shall be provided for each use in accordance with the requirements of § 28-503 and the design standards in Article 28-600.

**SECTION 3.** The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Somerset County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15, including to the Clerk of adjoining municipalities. The Borough Clerk shall execute Affidavits of Proof of Service of the notices required by this Section 5, and shall keep the Affidavits on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

**SECTION 4.** After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Watchung for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within thirty-five (35) days after referral, a report including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**SECTION 5.** If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

**SECTION 6.** All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 7.** This Ordinance shall take effect immediately upon: (i) adoption; (ii) publication in accordance with the laws of the State of New Jersey; and (iii) filing of the final form of adopted Ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16.

# Appendix 13

FILED

February 3, 2026

SOMERSET COUNTY SUPERIOR COURT  
WILLIAM G. MENNEN, J.S.C.

**ORDER PREPARED BY THE COURT**

**IN THE MATTER OF THE  
DECLARATORY JUDGMENT  
ACTION OF THE BOROUGH  
OF WATCHUNG, SOMERSET  
COUNTY PURSUANT TO P.L.  
2024, CHAPTER 2 (N.J.S.A.  
52:27D-304.1, et seq.),**

Petitioner.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
SOMERSET COUNTY  
DOCKET NO. SOM-L-183-25

Civil Action

Mt. Laurel Program

**DECISION AND ORDER APPROVING  
MUNICIPAL HOUSING ELEMENT AND  
FAIR SHARE PLAN (“HEFSP”) AS SAME  
WILL BE AMENDED FOR THE FOURTH  
ROUND HOUSING CYCLE**

**THIS MATTER**, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program (“Program”), pursuant to the Complaint for Declaratory Judgment filed on January 31, 2025 (“DJ Complaint”) by the Petitioner, **BOROUGH OF WATCHUNG** (“Petitioner” or “Municipality” or “Borough”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the “Program”, seeking a certification of compliance with the FHA; and

**WHEREAS**, the Court entered its Decision and Order Fixing Municipal Obligations for “present need” and “prospective need” for the Fourth Round Housing Cycle on April 8, 2025 for the Municipality – specifically, a “present need” obligation of 36 affordable housing units, and a “prospective need” obligation of 111 affordable housing units (collectively, the “Fourth Round Affordable Housing Obligation”); and

**WHEREAS**, the Planning Board of the Municipality adopted its proposed Housing Element and Fair Share Plan (“HEFSP”) for the implementation of its Fourth Round Affordable Obligation on June 9, 2025 (memorialized by Planning Board Resolution #PB25-R9 on June 17, 2025), thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended); and

**WHEREAS**, the governing body of the Municipality adopted Resolution #R7 on June 19, 2025 thereby endorsing the HEFSP for the implementation of its Fourth Round Affordable Obligation, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended), and which plan contained the elements set forth in the “Addendum” attached to Directive #14-24 (as amended); and

**WHEREAS**, a challenge to the Municipality’s HEFSP (“Challenge”) was timely and properly filed by Fair Share Housing Center (“FSHC” or “Challenger”) in accordance with the FHA and Section III.B of Directive #14-24, wherein the Challenger disputed, in whole or in part, certain compliance mechanisms and/or other aspects of the Municipality’s proposed HEFSP; and

**WHEREAS**, pursuant to the Program, the Administrative Office of the Courts (“AOC”) appointed and assigned the case to Program member, the Hon. Thomas C. Miller, A.J.S.C. (Ret.) (“Program Member”) to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC’s Directive #14-24, and that the Program Member appointed Francis J. Banisch, III PP, AICP, an independent affordable housing expert, as special adjudicator (“Special Adjudicator”) in this case to work with, make recommendations to and assist the Program, and who worked closely with the Program Member; and

**WHEREAS**, on November 10, 2025 and December 5, 2025, the Program Member conducted settlement conferences on notice to and with the participation of all parties in accordance with the statutory framework and Directive #14-24 with the goal of reaching a resolution; and

**WHEREAS**, the parties engaged in extensive settlement negotiations before, during, and after the settlement conferences, with the guidance and assistance of the Program Member and the Special Adjudicator; and

**WHEREAS**, as a result of the settlement conferences conducted, the Municipality's attorney reported to the Program Member in December 19, 2025 correspondence that the Municipality and Challenger FSHC reached a resolution ("Settlement"); and

**WHEREAS**, the parties entered into a mediation agreement on December 19, 2025 identifying and describing the terms of the Settlement ("Mediation Agreement" or "Settlement Agreement"); and

**WHEREAS**, the Court has received and reviewed the Program Member's report dated January 28, 2026 which has been posted to the eCourts jacket for this matter at Trans. ID: LCV2026220620, the findings, terms, and recommendations of which are incorporated by reference as though more fully set forth herein (the "Report"); and

**WHEREAS**, the Court has been advised that (i) the Special Adjudicator has recommended acceptance of the Settlement, (ii) the Program Member has recommended acceptance of the Settlement as being fair and equitable and in furtherance of the interests of low- and moderate-income households in the Municipality (collectively, the "Recommendations"), (iii) the Program Member has determined that the Settlement is constitutionally compliant and provides a fair and reasonable opportunity for the Municipality to meet its obligations under the FHA and Mount

Laurel doctrine, and that (iv) the Program Member further recommends that the Court adopt the findings and recommendations set forth in the Report and enter an Order, *forthwith*, implementing the terms of Settlement and thereby formally approve the Municipality's HEFSP as same will be amended under the terms of the Settlement to implement the "present need" and "prospective need" obligations of the Municipality for the Fourth Round housing cycle; and

**WHEREAS**, the Court has reviewed and considered the Program Member's Report and Recommendations, is satisfied that an arm's length Settlement was reached and entered into by and between the parties, finds and determines that the proposed HEFSP as same will be amended is fair and equitable, shall provide a "realistic opportunity" for the construction and/or delivery of housing affordable to those of the protected class of low- and moderate-income households in the Municipality, and thereby in their best interests, and for good and sufficient cause having otherwise been shown.

**IT IS, THEREFORE**, on and as of this 3<sup>rd</sup> day of February, 2026 **ADJUDGED AND ORDERED**, that the Program Member's Report and Recommendations for approval of the Settlement and the HEFSP of the Municipality as same will amended under the terms of the Settlement, be, and the same hereby is **ACCEPTED** and **ADOPTED** in its entirety; and to that end, more specifically, it is further

**ORDERED AND ADJUDGED**, as follows:

1. That the Settlement is **APPROVED**, with the exception that the Mediation Agreement be amended (particularly paragraph 10) to remove any provision requiring the continued involvement of the Special Adjudicator.

2. In accordance with N.J.S.A. §52:27D-304.1(f)(2)(c), on or before March 15, 2026, the Municipality shall adopt and file its Amended HEFSP that contains the terms of the Settlement as well as the implementing ordinances and resolutions proposed within the Amended HEFSP.

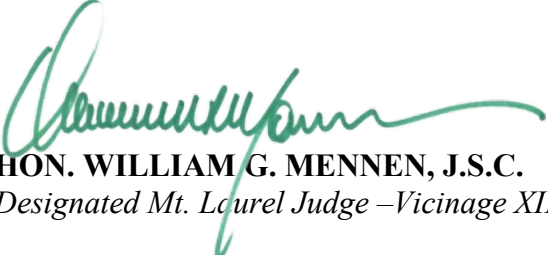
3. Thereafter, the court shall schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by the Court, a Fairness and/or Compliance Hearing) to consider approval of the Borough's amended HEFSP and the issuance of a Certification of Compliance and Repose.

4. The Borough shall be granted continued immunity from exclusionary zoning litigation for the duration of the compliance process *conditioned upon* the Borough's compliance with this Order and good faith implementation of the HEFSP as same will be amended under the terms of the Settlement and good faith participation in the compliance process.

**5. Failure to meet the March 15 deadline shall preclude the Court's issuance of a Certification of Compliance and Repose as required by the FHA and Directive #14-24 (as amended), and thereby result in the Municipality losing immunity from exclusionary zoning litigation**

**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on the Petitioner, Petitioner's counsel, and counsel for all Challengers upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. 1:5-1(a) and R. 1:32-2A.

SO ORDERED:

  
**HON. WILLIAM G. MENNEN, J.S.C.**  
*Designated Mt. Laurel Judge – Vicinage XIII*

**Pursuant to R. 1:7-4(a), the Court's Statement of Reasons is attached hereto and made a part hereof.**

**STATEMENT OF REASONS**

[R. 1:7-4(a) – Directive #14-24, Section III.F]

Having reviewed and considered the Program Member’s Report and Recommendations dated January 28, 2026 (inclusive of the detailed report and recommendation of the Special Adjudicator referenced in the Program Member’s Decision Recommendation), as well as the terms of Settlement reached by and between the Municipality and Challenger, FSHC, as embodied in the written Mediation Agreement entered into and executed by those parties; and having further determined there is no need to take testimony to resolve any relevant factual issue, the Court is satisfied, finds and concludes:

(i) that an arm’s length Settlement was reached and entered into by and between the parties, and that the terms of the Settlement attained are fair and equitable;

(ii) that the proposed HEFSP as same will be modified and adopted is fair and equitable, and shall provide a “realistic opportunity” for the construction and/or delivery of housing affordable to those of the protected class of low- and moderate-income households in the Municipality;

(iii) that the HEFSP is thereby in the best interests of the protected class of low- and moderate-income households in the Municipality. The Court notes the Special Adjudicator’s professional opinion (adopted by the Program Member) that the Settlement “fairly and reasonable resolves the issues raised by FSHC and brings the Borough of Watchung’s compliance plan into alignment with the applicable statutory requirements.”

(iv) Accordingly, the Court hereby adopts in full the Report and Recommendations of the Program Member and accepts the same for the detailed findings and reasons set forth therein. As a result, the Municipality retains all the protections of the above-referenced amendments to the FHA, continues to retain immunity from exclusionary zoning litigation, and that the Court retains jurisdiction for the Municipality’s adoption of implementing ordinances as required in accordance with the statutory framework and AOC Directive #14-24, by or before March 16, 2026, and thereupon, the Court’s issuance of a Certification of Compliance.

An appropriate form of Order implementing the Program Member’s Report and Recommendations accompanies this Statement of Reasons.

**SO ORDERED.**

MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE  
RESOLUTION PROGRAM

In the Matter of the Application of the Borough of Watchung, County of Somerset,  
Docket No. SOM-L-000183-25

**WHEREAS**, the Borough of Watchung (the “Borough” or “Watchung” or “municipality”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the “Fair Housing Act”) on January 31, 2025; and

**WHEREAS**, the Court entered an order April 8, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of thirty-five (35) units and a Prospective Need of one hundred and eleven (111) units, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

**WHEREAS**, the Watchung Borough Planning Board held the public hearing on the HE&FSP on June 9, 2025, with a memorializing Resolution adopting the HE&FSP on June 17, 2025, and the HE&FSP having been filed with the Program on June 18, 2025; and

**WHEREAS**, the Borough Council adopted Resolution No. R7 on June 19, 2025, with same being filed with the Program on June 23, 2025; and

**WHEREAS**, FSHC having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s HEFSP on August 31, 2025; and

**WHEREAS**, the Borough and FSHC have agreed to amicably resolve the issues set forth in the challenge through this mediation agreement and present this agreement for review by the Program and referral to the Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, which if approved will result in a compliance certification for the Borough for the Fourth Round; and

**THEREFORE**, the Borough and FSHC agree:

**Fair Share Obligations**

1. The Borough’s Present Need or Rehabilitation Obligation is one hundred and eleven (111) units; the Borough’s Prior Round Obligation (1987-1999) is pre-credited two hundred and six (206), with a realistic development potential of one hundred and sixty nine (169) units; the Borough’s Third Round Obligation (1999-2025) is three hundred and ninety six (396), with a realistic development potential of fifty three (53) units, and the Borough’s Fourth

Round Prospective Need (2025-2035) is one hundred eleven (111) units, with a realistic development potential of thirty six (36) units.

### **Satisfaction of Fair Share Obligations**

2. The Borough will address its Present Need obligation through its reinstated Housing Rehabilitation Program.
3. The Borough's realistic development potential of the Prior Round Obligation is one hundred and sixty-nine (169) units, and has been met with the mechanisms listed on Page 24 of the Adopted HEFSP, as may be amended.
4. The Borough's realistic development potential of the Third Round Obligation is fifty-three (53) units, and has been met with the mechanisms listed on Page 26 of the Adopted HEFSP, as may be amended.
5. The Borough's realistic development potential of the Fourth Round Obligation of thirty-six (36) units, will be addressed as set forth in **Exhibit A**, which will be incorporated into an updated, amended HEFSP to be adopted by the Planning Board of the Borough of Watchung and endorsed by the Borough Council of the Borough of Watchung.
6. A portion of FSHC's August 31, 2025 challenge requested that the Borough provide more extensive information as to the site suitability of some of the sites selected by the Borough for inclusion in the HEFSP, including a demonstration that each site addresses the four "ables" of available, suitable, developable, and approvable as those terms are defined in N.J.A.C. 5:93, et. seq. The parties agree that **Exhibit A** addresses these concerns.

### **Unit Type and Income Distribution Requirements**

7. The Borough and FSHC agree that the Borough's HEFSP as presented above satisfies the following standards set forth in P.L. 2024, c. 2, including but not limited to with respect to the following, and that the Borough shall maintain satisfaction with such requirements for the Fourth Round:
  - a) Age Restricted Cap. The Borough agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units that address the Fourth Round Prospective Need obligation exclusive of any bonus credits.

- b) Family units. Pursuant to N.J.S.A. 52:27D-311(l), the municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits created to address its Fourth Round Prospective Need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).
  - c) Rental and family rental units. Pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its Prospective Need affordable housing obligation shall be addressed through rental housing, including at least half as available to families with children.
  - d) Very Low-Income Units. Pursuant to N.J.S.A. 52:27D-329.1, thirteen percent (13%) of all affordable units referenced in this Agreement addressing the municipality's Prospective Need obligation shall be very-low-income units for households earning thirty percent (30%) or less of the median income, with half of the very low income units being available to families.
  - e) All new construction units shall be adaptable in conformance with P.L.2005, c.350/ N.J.S.A. 52:27D-311a and -311b and all other applicable law.
  - f) All Prior Round and Third Round compliance shall continue to meet with the applicable percentages and standards for bonuses, family and senior housing, rental and family rental, very low income units, and adaptability set forth in any prior settlement agreement between FSHC and the municipality, statutory requirements, and the Prior Round and Third Round regulations.
8. In all developments that produce affordable housing, the Borough and FSHC agrees that unless varied by a prior court order of the trial court, the below terms shall apply:
- a) All of the affordable units, except as otherwise noted below, shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., as may be amended ("UHAC"), including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.
  - b) The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and most current form of UHAC adopted by

HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior rounds of obligations modifying UHAC as to affordability controls longer than the now-current regulations or as to very-low-income units shall remain in effect as to those prior rounds of obligations.

- c) The municipality agrees that in order to meet the low income and very low income requirement of the Fair Housing Act that it shall adopt an ordinance requiring for all affordable housing developments in its HEFSP that fifty percent (50%) of the affordable units within each bedroom distribution shall be required to be for low income households earning fifty percent (50%) or less of median income, including thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income.
- d) The municipality agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.
- e) The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. The affirmative marketing plan shall include the following community and regional organizations: FSHC; the Latino Action Network; Willingboro NAACP; Southern Burlington County NAACP; and the Supportive Housing Association.

#### **Process for Approval and Implementation**

9. Pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:

- a) The municipality and FSHC shall present this mediation agreement to the Program member for review upon full execution by both parties.

- b) The Program member shall review the agreement and if satisfied with compliance with the Fair Housing Act shall refer this matter to the Mt. Laurel judge for review and entry of certification of compliance, conditioned on adoption of all implementing ordinances and resolutions.
  - c) The municipality, through adoption by the Planning Board and endorsement of the governing body, shall adopt an updated, amended HEFSP, in compliance with the terms of this Agreement no later than March 15, 2026, which shall be filed with the Program through eCourts within 48 hours of adoption.
  - d) The municipality shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or by March 15, 2026, whichever is sooner, the Borough shall file the information required by Paragraph 10 and any other adopted ordinances and resolutions on eCourts.
  - e) No later than April 15, 2026, the Borough and FSHC shall provide via filing on eCourts a form of consent order granting final compliance certification for the Court's review, or identify any remaining issues of compliance that may be disputed at which point the court shall schedule a conference to review any such areas.
  - f) Both parties agree to implement the terms of this Agreement. If the Program, county level housing judge, or any appellate court rejects this Agreement, the Parties reserve their right to rescind any action taken in anticipation of the Program's approval and return to status quo ante. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.
10. The municipality and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by January 1, 2026:
- a) The Borough will provide draft, updated, amended HEFSP, in compliance with this Agreement, to FSHC and the Special Adjudicator by January 15, 2026. FSHC and

the Special Adjudicator shall provide comments and/or request for revisions to same by February 15, 2026. The Borough shall adopt the updated, amended HEFSP by March 15, 2026. Any disputes concerning the form of HEFSP shall be resolved by the Program.

- b) The Borough will provide draft zoning ordinances for the proposed overlay zones for the 4<sup>th</sup> Round to FSHC and the Special Adjudicator before January 15, 2026. FSHC and the Special Adjudicator shall provide comments and/or requests for revisions by February 15, 2026. The Borough shall adopt the ordinances by March 15, 2026. Any disputes concerning the form of ordinance shall be resolved by the Program.
  - c) The Borough will provide resolutions appointing the Municipal Housing Liaison and Administrative Agent(s).
  - d) The Borough will provide the affordability assistance program manual.
  - e) The Borough will provide the rehabilitation program manual.
  - f) The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99.
  - g) The Borough will update and adopt its affordable housing ordinance, development fee ordinance, affirmative marketing plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq., after they are adopted and before March 15, 2026, if possible.
11. The Borough shall provide the following additional information and/or commit to the following requirements on the proposed program to extend affordability controls:
- a) The Borough shall provide, by January 15, 2026, a draft Spending Plan that outlines any expenditures related to the Borough's proposed program to extend affordability controls at Crystal Ridge apartment complex. FSHC shall provide any comments by February 15, 2026. The Borough shall adopt the final Spending Plan by March 15, 2026.
  - b) The Borough shall provide the proposed deed restriction the Borough intends to utilize in extending the affordability controls which shall be in a form consistent with the requirements of the Uniform Housing Affordability Controls (UHAC) regulations.

- c) The Borough shall provide a plan to ensure that all units being extended receive a “continuing certificate of occupancy” and that any units which need repairs to receive a certificate of occupancy or be brought up to code will receive the required repairs.
  - d) The Borough shall provide an analysis of the extent of the costs associated with anticipated rehabilitation of the units, which shall include: a pro forma of the costs for the rehabilitation, documentation of the source of funding, a resolution of intent to fund those rehabilitation costs, and a rehabilitation manual.
  - e) The Borough shall demonstrate that it has complied with all other requirements of the updated UHAC regulations.
12. The Borough’s Compliance Certification shall be subject to required ongoing monitoring as required by the statute, including Section 329.2, 329.4, 313 and C.40:55D-8.4. In addition to the requirements of the statute, the Borough agrees to provide FSHC a copy of all monitoring documents.
13. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the Parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by law, absent the need to invoke the rule of necessity.

The undersigned, on behalf of their respective clients, have consented to this Mediation Agreement and represent that they are authorized to execute it on their behalf. This Mediation Agreement shall not be further modified, amended or altered in any way except by a writing signed by both the Borough and FSHC.



By: \_\_\_\_\_  
Joseph V. Sordillo, Esq.  
Counsel for the Borough of Watchung  
Dated: 12-19-2025



By: \_\_\_\_\_  
Joshua D. Bauers, Esq.  
Counsel for Fair Share Housing Center  
Dated: 12-19-2025

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## **APPENDIX 11**

### **Evaluation of Fourth Round Overlay Zones and Updated Compliance Evaluation**

This addendum outlines the modifications to the Borough’s existing and overlay zones per Borough discussion with the Share Housing Center (FSHC). Further, it provides additional evaluation of these overlay zones per comments received by the FSHC including but not limited to evaluation of these zones per N.J.A.C. 5:93-1.3:

“Approvable site” means a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

“Available site” means a site with a clear title, free of encumbrances which preclude development for low- and moderate-income housing.

“Developable site” means a site that has access to appropriate water and sewer infrastructure and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by NJDEP.

“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets, and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

#### **Proposed “Route 22 Affordable Housing Overlay Zone -2”**

The Borough’s Fourth Round plan proposes a second overlay zone along Route 22- a new “Route 22 Affordable Housing Overlay District – 2” zone. In the submitted plan, this overlay zone would cover Block 6201, Lots 4, 5.01, 5.02 and 6 (1692-1996 Route 22). The site is currently a commercially-developed site in the Borough’s Highway Development (H-D) zone. The zone would permit a multifamily development at a density of 18 units per acre (with a 20% affordable set-aside).

The Borough agrees with FSHC’s suggestion to use the proposed Route 22 overlay zone towards the 25% unmet need requirement. Further, based on input received from FSHC, the Borough has agreed to the following amendments to this overlay zone:

- Inclusion of Block 6301 Lot 1 (the site currently occupied by Mattress Firm at 1702 Route 22) in that proposed overlay zone.

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The addition of this site, along with vacation of the right-of-way dividing these sites - very possible as this street provides access to no other sites, would bring the site area to approximately 2.1 acres. With a density of 18 units per acre, the proposed overlay zone would now allow for the development of a 36-unit multi-family development with 8 affordable units.

The new "Route 22 Affordable Housing Overlay District - 2" has been largely modeled after the Borough's existing "Route 22 Affordable Housing Overlay District" which exists in another area along Route 22 and was created to address a portion of the Borough's third round obligation. The bulk requirements of the "Route 22 Affordable Housing Overlay District - 2" zone are also consistent with relevant portions of the surrounding H-D zone including similar building and impervious coverage requirements.

Roughly 90% of the site has been developed with buildings and parking areas in the front of the site along Route 22 with a large outside storage area located behind the buildings. The rear 10% of the site is forested. The far rear of the site contains a small portion of the flood plain associated with Green Brook. The site is serviced by necessary public infrastructure (including public water and water).

The Borough's believes that the Fair Share Plan demonstrates that this proposed overlay zone (particularly with its permitted density of 18 units per acre) creates a realistic opportunity for the

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creation of affordable housing. The proposed 18 unit/ acre density is: (1) greater than the 14 unit/ acre density of the Crystal Ridge development (also located along Route 22); (2) three times the density of the Bonnie Burn development currently under development; and (3) consistent with the density of the 18 unit/ acre density of the existing Route 22 overlay zone relatively-recently enacted in the Route 22 corridor (which the Borough contends creates a realistic opportunity).

The inclusion of Block 6301 Lot 1 (the site currently occupied by Mattress Firm at 1702 Route 22) in this proposed overlay zone, as recommended by FSHC, and the inclusion of roadway area that could be vacated, further enhances the viability of this zone.

The proposed overlay zone is located along US Route 22 with frontage along the highway. Multifamily development would be consistent with the nature of the Route 22 corridor which is characterized by a mixture of commercial uses along with other multifamily development in the vicinity.

The site is available, developable, suitable, and approvable. There are no known encumbrances which preclude development for low- and moderate-income housing. The site has access to appropriate water and sewer infrastructure. The site is adjacent to compatible land uses, has access to appropriate streets and redevelopment of the site with residential use can be done in a manner that is consistent with the environmental policies delineated in N.J.A.C. 5:93-4 (not in wetlands, flood hazard areas, steep slopes). The site can be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site.

Lastly, the analyses below is provided in response to the request from FSHC that the Borough demonstrate that the development contemplated in the proposed overlay zone can be accommodated on the site:

- Based on 36 units required parking is estimated to be 72 spaces (based on RSIS parking requirements and assuming a bedroom split of: 1-bedroom (20); 2-bedroom (60%) and 3-bedroom (20%)). Based on 300 square feet of pavement per space (assuming 9'x18' spaces and 24' aisle width), 72 parking spaces would result in roughly ½ acre of pavement. Considering the roughly 2-acre size of the site, ample room exists on site for necessary parking, with flexibility to do so.
- The proposed impervious coverage of 80% will not impede construction of buildings, parking areas, driveways and walkways serving the development.
- The 40% building coverage limitation will not unduly restrict potential development. The 2-acre site and the 40% permitted building coverage would permit a building footprint of roughly 35,000 square feet. With a permitted building height of 3 stories, the total building square footage would be roughly 105,000. Assuming 15% of the floor area would be dedicated to common areas, would leave square footage for roughly 2,500 square feet per apartment.
- Due to a site depth of roughly 350 feet, the proposed front yard (75 feet) building setback and rear yard building setback (25 feet) would not impede development of the site (resulting in a

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permitted building envelope of up to 250 feet in width). Likewise, with a site width in excess of 325 feet, the proposed building setback requirement (15 feet) would not impede development of the site (the building envelope would be up to 295 feet in width). The proposed building setbacks would result in a large permitted building envelope allowing for ample flexibility in building placement.

**Existing Route 22 Affordable Housing Overlay Zone**

This existing Overlay District encompasses the 5-acre Liccardi Ford Tract (Block 64.02, Lot 3) and a 13.7-acre undeveloped portion of the Mount Saint Mary's Academy Tract (Block 64.02, Lot 5) along the northerly side of US Route 22, encompassing 18.7 acres of land. The zone permits: for-sale multifamily development at density of 14 units per acre with a minimum of 20% affordable sets-aside; and rental multifamily development at a density of 18 units per acre with a 15% affordable set-aside.

Based on input received from FSHC the Borough has agreed to the following amendments to this overlay zone:

- Increase the permitted density for for-sale development from 14 units/ acre up to 18 units/ acre consistent with that already permitted for rental development.
- Increase affordable set-aside for rental developments from 15% up to 20% consistent with that required for for-sale developments.

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With a proposed, consistent, permitted density of 18 units/ acre this zone would continue to create a reasonable incentive for potential redevelopment with affordable housing. At roughly 18 acres in size and a permitted density of 18 units/ acre, if the full extent of the zone was developed, this zone could result in the potential for in excess of 300 total dwelling units (of which at least 60 would be affordable units).

The permitted densities of the Route 22 overlay zone are consistent with the density of the nearby R-M-L-I zone which resulted in the development of the inclusionary Crystal Ridge development including similar bulk requirements including building height and coverages. In fact, the Route 22 overlay zone actually permits a higher permitted density for rental development (at 18 units per acre) than the maximum 14 unit per acre density of the R-M-L-I zone.

The permitted densities of the Route 22 overlay zone (which permits rental developments at a density of 18 unit per acre) is more than three times higher than the permitted density of the Bonnie Burn Redevelopment zone (which permits 230 units on a 40 acre site equating to a density of around 6 units per acre). As addressed herein, that development is under construction and address a significant portion of the Borough's Third Round obligation.

The Borough has reviewed the existing overlay zone ordinance and could not find a single requirement that poses an unnecessary restriction on development (e.g., permitted building and impervious coverages, setbacks, etc.). The requirements of the zone are typical of such multi-family

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zones and consistent with the scale and requirements of nearby commercial zones including the Borough’s Highway Development (H-D) Zone along Route 22 and the Borough’s other multi-family inclusionary zoning districts.

The zone does not contain any streams, riparian zones or flood hazards areas. NJDEP mapping suggests the possible presence of some limited wetlands areas in the forested portions of the zone behind the Liccardi Ford site. There are no other encumbrances known that would preclude development in the overlay zone. The area is served by public water and public sewer infrastructure.

The zone is located along US Route 22 with several hundred of frontage along the highway. Multifamily development would be consistent with the nature of the Route 22 corridor which is characterized by a mixture of commercial uses along with other multifamily development in the vicinity.

The above demonstrates that the zone is “approvable”, “available”, “developable” and “suitable” per N.J.A.C. 5:93-1.3.

**Existing Somerset Street/Watchung Avenue “Triangle” Affordable Housing Overlay District**

This existing overlay district encompasses the “Triangle” area bounded by Watchung Avenue, Somerset Street and Johnston Drive. This district permits mixed-use development as a principal permitted use consisting of first floor commercial uses and residential units on the second and third floors only permitted in conjunction with affordable housing. Residential use is permitted at a density of 6 units/acre for for-sale units (with a 20% affordable set-aside) and 10 units/acre for rental units (with a 15% affordable set-aside).

Based on input received from FSHC the Borough has agreed to the following amendments to this overlay zone:

- Increase the permitted density for for-sale development from 6 units/ acre up to 10 units/ acre consistent with that permitted for rental development.
- Increase affordable set-aside for rental developments from 15% up to 20% consistent with that required for for-sale developments.

The zone is located along County Rt 531 (Watchung Avenue/ Somerset Street) with several hundred of a frontage along these roadways. The mixed-use development permitted under this overlay zone would be consistent with the nature of the “triangle” area which is characterized by a mixture of commercial uses. The permitted scale of development permitted in the zone is consistent with the nature of the “triangle” area while being cognizant of the low-density single-family located in close proximity. The Borough has reviewed the existing overlay zone ordinance and could not find a single requirement that poses an unnecessary restriction on development (e.g., permitted building and impervious coverages, setbacks, etc.).

The zone does not contain any streams, riparian zones or wetlands. There are no environmental constraints known that would preclude redevelopment in the area. There are no other encumbrances known that would preclude development in the overlay zone. The area is served by public water and public

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sewer infrastructure.

The above demonstrates that the zone is “approvable”, “available”, “developable” and “suitable” per N.J.A.C. 5:93-1.3.

### **Updated Compliance Evaluation**

Below is an updated analysis of the Borough’s Fourth Round Plan in light of the increased RDP of 36 (from 23) and the changes addressed/ agreed to with FSHC. The analysis demonstrates that the Borough’s Fourth Round Plan remains in compliance with its overall obligation and remains in compliance with respect to the various other requirements (e.g., income, family and rental requirements).

#### **Realistic Development Potential (RDP)/ Bonus Credits**

The rules limit the application of bonus credits to no more than 25% of the municipality’s prospective need obligations. With an adjusted prospective (RDP) need of **36** units, the number of bonus credits that the Borough can claim is capped at **9**.

The affordable housing mechanisms proposed in this plan are eligible for bonus credits as follows:

- *Extension of Expiring Controls*: With 40 affordable units: eligible for 20 bonus credits (0.5 per unit bonus credits for extension of expiring controls)
- *1375 Plainview Avenue*: With 5 affordable units: eligible for 2.5 bonus credits (0.5 per unit bonus credits for redevelopment of an office site)
- *Our House Inc. – Group Home – 103 High Tor Drive*: With 6 affordable special needs units: eligible for 6.0 bonus credits (1.0 per unit bonus credit for development of special needs housing)
- *990 Somerset Street*: With 1 affordable unit: eligible for 0.5 bonus credits (0.5 per unit bonus credits for redevelopment of commercial space into an inclusionary residential development)

After applying the **9** bonus credits to the **36**-unit RDP, the Borough must provide its obligation through the production of at least **27** actual units (exclusive of bonus credits). This requirement will be satisfied as follows:

- *1375 Plainfield Avenue*: 5 units
- *Our House, Inc Group Home*: 6 units
- *990 Somerset Street*: 1 unit
- *Extension of Expiring Controls*: 40 units
  - *Total required*: 27 units
  - *Total provided*: 52 units

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Age-Restricted Affordable Housing Units

The rules cap the number of affordable housing units restricted to seniors to 30% of the affordable housing units being provided. The plan complies as no senior affordable units are proposed in this plan.

Family Affordable Housing Units

The rules require that at least 50% of the affordable units be available to households with children (e.g., not senior units or group homes). This requirement will be satisfied as follows:

- 1375 Plainfield Avenue: 5 units
- 990 Somerset Street: 1 unit
- Extension of Expiring Controls: 40 units
- Total minimum required: 14 units (50% of the 27-unit minimum)/ 18 units (50% of the 36-unit RDP)
- Total provided: 46 units

Rental Affordable Housing Units

The rules require that at least 25% of the affordable units be available rental. This requirement will be satisfied as follows:

- Our House, Inc Group Home: 6 units
- 990 Somerset Street: 1 unit
- Extension of Expiring Controls: 40 units
- Total required: 7 units (25% of the 27-unit minimum)/ 9 units (25% of the 36-unit RDP)
- Total provided: 47 units

Family Rental Affordable Housing Units

The rules require that at least 50% of the rental affordable units be available to households with children. This requirement will be satisfied as follows:

- 990 Somerset Street: 1 unit
- Extension of Expiring Controls: 40 units
- Total required: 4 units (50% of the rental unit minimum based on the 27-unit minimum)/ 5 units (50% of the rental unit minimum based on the 36-unit RDP)
- Total provided: 41 units

Low-Income Housing Units

The rules require that at least 50% of the affordable units be low-income units (i.e., affordable to households making no more than 50% of the median household income in the housing region). This requirement will be satisfied as follows:

- 1375 Plainfield Avenue: 3 units
- Our House, Inc Group Home: 6 units
- Extension of Expiring Controls: 20 units

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- *Total required:* 14 units (50% of the 27-unit minimum)/ 18 units (50% of the 36-unit RDP)
- *Total provided:* 29 units

*Very-Low-Income Housing Units*

The rules require that at least 13% of the affordable units be very-low-income units (i.e., affordable to households making no more than 30% of the median household income in the housing region). This requirement will be satisfied as follows:

- *Our House, Inc Group Home:* 6 units
  - *Total required:* 4 units (13% of the 27-unit minimum)/ 5 units (13% of the 36-unit RDP)
  - *Total provided:* 6 units

*Total Obligation/ Credits*

The 36-unit RDP will be satisfied as follows:

- *Prior Round Surplus:* 8 units
- *Bonus Credits:* 9 credits
- *Actual Units:* 52 units
  - *1375 Plainfield Avenue:* 5 units
  - *Our House, Inc Group Home:* 6 units
  - *990 Somerset Street:* 1 unit
  - *Extension of Expiring Controls:* 40 units
- *Total required:* 36
- *Total provided:* 69



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Joseph Sordillo, Esq.  
Extension 218  
jsordillo@newjerseylaw.net

December 19, 2025

**VIA ECOURTS**

Hon. Thomas Miller, Chair  
Affordable Housing Dispute Resolution Program  
New Jersey Administrative Office of the Courts  
Richard J. Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625

Re: In the Matter of the Application of the Borough of Watchung  
Docket No.: SOM-L-000183-25  
Watchung Borough's Housing Element & Fair Share Plan  
DB File No. WB2000

Dear Judge Miller:

I continue to represent the Borough of Watchung ("Borough" or "Watchung") as Municipal Attorney and in connection with the above-referenced matter. I am happy to report that the Borough and Fair Share Housing Center ("FSHC") has settled FSHC's objection to the Borough's Housing Element & Fair Share Plan ("HE&FSP"), which is memorialized in the attached Mediation Agreement. The parties respectfully request that Your Honor enters a recommendation to the Vicinage Mount Laurel Judge for entry of an Order consistent with the terms of the attached Agreement.

Thank you for your attention and all your assistance with regard to this matter.

Respectfully Submitted,  
DIFRANCESCO BATEMAN

By: \_\_\_\_\_  
Joseph V. Sordillo

Enc.  
cc: Josh Bauers, Esq., FSHC  
Frank Banisch, Special Adjudicator  
(all w/enc. via eCourts)